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PETITION AND TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [REDACTED] 1926

No [REDACTED] 291

THE UNITED STATES, PETITIONER

vs.

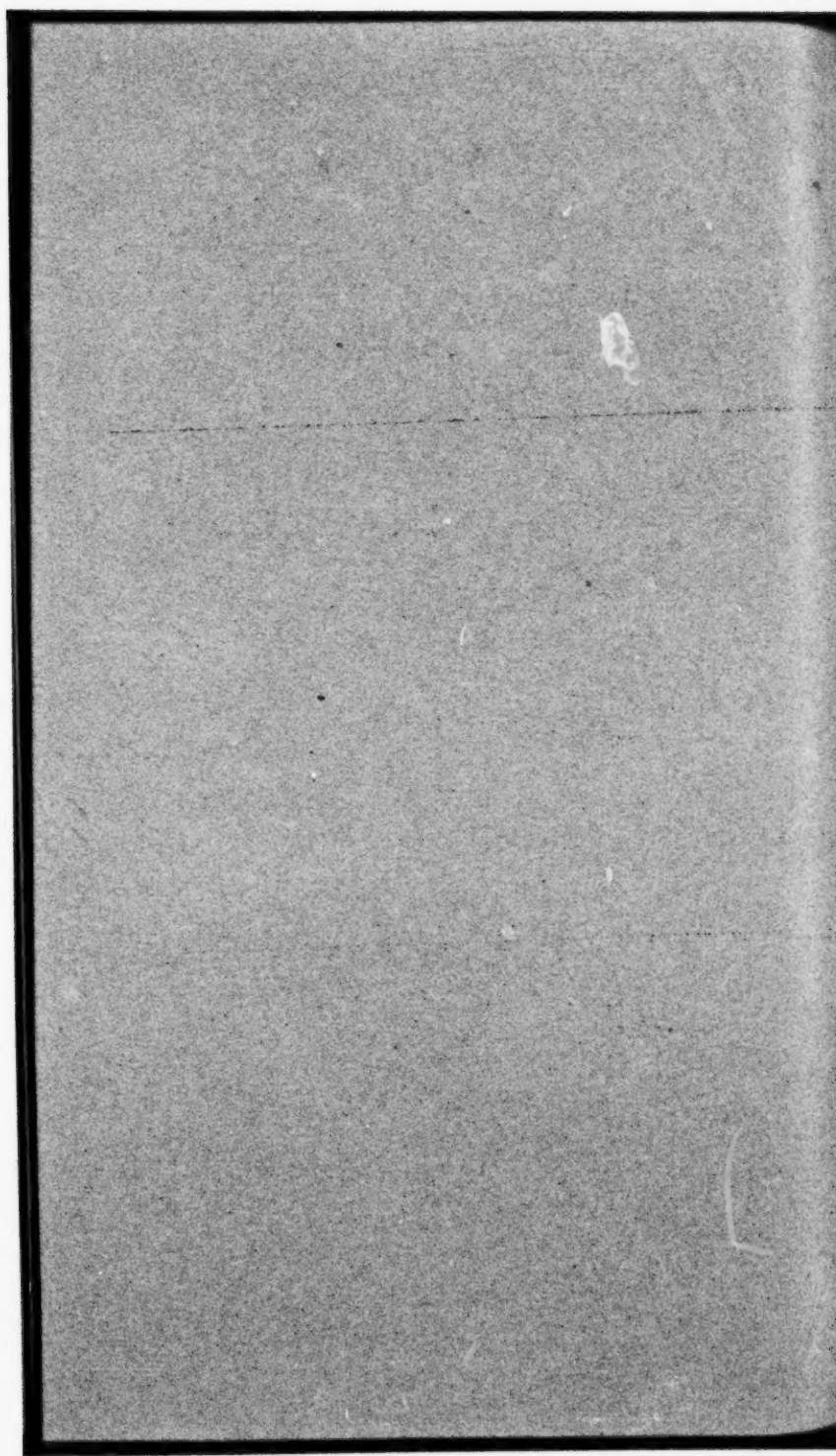
**THE S. S. WHITE DENTAL MANUFACTURING COMPANY
OF PENNSYLVANIA**

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED FEBRUARY 5, 1926

CERTIORARI GRANTED APRIL 19, 1926

(31680)



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 957

THE UNITED STATES, PETITIONER

vs.

THE S. S. WHITE DENTAL MANUFACTURING COMPANY
OF PENNSYLVANIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
CLAIMS

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A In the Supreme Court of the United States

October term, 1925

No. —

THE UNITED STATES, PETITIONER

v.

THE S. S. WHITE DENTAL MANUFACTURING COMPANY
OF PENNSYLVANIA

Petition for writ of certiorari to the United States Court of Claims

The United States of America prays that a writ of certiorari issue to the United States Court of Claims directing that court to certify to this court the record in the case of The S. S. White Dental Manufacturing Company of Pennsylvania v. The United States, No. D-537, in that court, in order that the decision and judgment of said court, rendered on November 9, 1925, may be reviewed.

STATEMENT OF THE CASE

B The claimant sued to recover taxes paid by it under protest in the amount of \$83,813.59, alleged to have been illegally collected, and claim for refund of which had been denied. The basis of its claim was that it had sustained a deductible loss during the year 1918 within the meaning of section 234 (a) (4) of the revenue act of 1918 (chap. 18, 40 Stat. 1057, 1078), but which had not been allowed by the Government in the computation of its net taxable income for 1918.

The claimant had a subsidiary company in Berlin, Germany, the property of which was seized on March 19, 1918, by the then Imperial German Government, acting through an agent known as the sequestrator. In its tax return for the year 1918 the claimant deducted a loss of \$110,764.34. Later an amended return was filed and a loss of \$130,764.34 was deducted for the year 1918.

In Finding II of the Court of Claims it is stated that the investment was charged off the books in 1918. What is meant by this finding is explained in Finding VIII, which sets up the resolution of the board as follows:

C "Stated meeting, board of directors, July 29, 1918. The S. S. White Dental Mfg. Co., m. b. h., Berlin

"Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock-----	\$15,000.00
B-28, furniture & fixtures-----	7,046.26
B-17, open accounts-----	\$127,670.75
Less formerly adjusted-----	18,952.67
	<hr/> 108,718.08
	<hr/> 130,764.34

and

"Whereas in 1916 there was charged as a reserve against this amount the sum of \$20,000; and

"Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

"RESOLVED, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated."

This amount, claimed as a loss, was the investment of the claimant in the subsidiary company as shown by the books on December 31, 1915, at which time the last authentic report was received. This loss was disallowed by the committee on appeals and review of the Internal Revenue Bureau and by the Commissioner of Internal Revenue, because it was not a closed and completed transaction.

The property of the Berlin company was released and returned to the claimant or its subsidiary on March 14, 1920. The physical assets and leasehold of the subsidiary were sold by claimant in 1922 for \$6,000. In 1923 the claimant filed a claim with the Mixed Claims

Commission against Germany in the total sum of \$368,333.32
D on account of the loss of its subsidiary, and on January 30, 1924, was notified by the agent of that commission that the claim had been allowed for \$70,000, with interest at 5 per cent from February 1, 1920, to the date of payment.

The Government contended that the charging off of the loss for 1918 was of no effect of itself and that no loss could be deducted under section 234 (a) (4) of the revenue act of 1918 (hereinafter set out), unless the loss was actually sustained as evidenced by a closed and completed transaction. On the Government's theory there was no closed and completed transaction in 1918.

The Court of Claims held that "the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms."

THE STATUTES

The pertinent parts of the revenue act of 1918 (40 Stat. 1057) are as follows:

"SEC. 232. That in the case of a corporation subject to the tax imposed by section 230 the term 'net income' means the gross income * * * less the deductions allowed by section 234. * * *"

"SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

"(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise."

E

THE ISSUE

Did the claimant, under the facts in this case, sustain a loss during the taxable year 1918 not compensated for by insurance or otherwise, as a result of the sequestration of the property and business of the Berlin company by the German Government on March 19, 1918?

REASONS FOR GRANTING THE PETITION

1. In the view of the petitioner the Court of Claims erred in deciding in effect that the claimant could take a deduction for a loss not evidenced by a closed and completed transaction.

2. The Internal Revenue Bureau has always provided in its regulations, which it has consistently carried out, that no loss could be deducted unless it was actually sustained, as evidenced by a closed and completed transaction. There are practically no decisions of the courts on this point.

The question involved is an important one, as it will affect all taxpayers who had property in Germany seized by that Government and who presented claims to the Mixed Claims Commission. The amount involved is very large even in the narrow field of this class of taxpayers, but the decision may reach all claims for refund based on losses sustained.

Wherefore it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Court of Claims should be granted.

WILLIAM D. MITCHELL,

Solicitor General.

HERMAN J. GALLOWAY,

Assistant Attorney General.

FRED K. DYAR,

Special Assistant to the Attorney General.

JANUARY, 1926.

1

In Court of Claims of the United States

No. D 537

THE S. S. WHITE DENTAL MANUFACTURING COMPANY OF PENNSYLVANIA

VS.

THE UNITED STATES

I. Petition

Filed July 24, 1924

To the Honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully shows unto your honors the following facts:

1. Petitioner is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office at

Philadelphia, in said State, for the purpose of manufacturing and selling artificial teeth, dental tools, instruments and articles of all kinds, and preparations, apparatus and articles useful or convenient in the science and practice of dentistry and oral surgery.

2. The said The S. S. White Dental Manufacturing Company of Pennsylvania, parent corporation of The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, made an income and profits tax return and also an amended income and profits tax return to the United States Commissioner of Internal Revenue of its income for the year 1918 (Exhibit A), and deducted as a loss in its said United States income and profits tax return the sum of \$110,764.34, and in its amended income and profits tax return it deducted \$130,764.34 for the year 1918, made to the said United States Commissioner of Internal Revenue, being the value of all the assets of The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Company of Pennsylvania in 1918, and which is called its Berlin loss, for the reason that under date of March 19, 1918, Herman Ubert, resident manager of The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, was notified by one Emil Meyer, a representative of the then German Imperial Government, that he had been appointed sequestrator by the then German Minister for Commerce and Manufacturers, and by said authority on March 19, 1918 (Exhibit B), did seize and sequester the property of The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, for the use of the then Imperial German Government. The property seized and confiscated by the sequestrator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company. Because of the aforesaid loss of property, which belonged to The S. S. White Dental Manufacturing Company of Pennsylvania, the amount of \$130,764.34 was charged off the books of it, the parent corporation, The S. S. White Dental Manufacturing Company of Pennsylvania, in the year 1918, as that was the exact amount of the parent corporation's investment in The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, prior to the books of the said The S. S. White Dental Manufacturing Company of Pennsylvania in 1918.

3. The last statement received by The S. S. White Dental Manufacturing Company of Pennsylvania from The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany, as shown by sequestration of The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, by the German sequestrator, showed the value of the tangible and intangible assets of The S. S. White

Dental Manufacturing Company, m. b. h., of Berlin, Germany, books on January 1, 1917, to be \$149,217.01 in United States currency.

Due to the fact that all lines of communication for commercial transactions between the United States and Germany had been discontinued as a result of the war then pending between the United States and Germany, it was not possible to reconcile the \$130,764.34, representing the amount of \$149,217.01 contained in the last statement received from The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, and, therefore, at the time of filing its income and profits tax return for 1918, The S. S. White Dental Manufacturing Company of Pennsylvania was restricted absolutely in making said deduction on its United States income and profits tax return for the year 1918 on account of its Berlin loss to the amount of \$130,764.34, appearing on its books as a loss.

4. The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, was organized on January 20, 1896, upon which date the said corporation was entered of record in the Berlin Trade Register under No. 1211. The capital of the said company at the time of organization consisted of marks 60,000, and the names of the stockholders and the amount of stock held by each at the time of organization are as follows:

	Marks
The S. S. White Dental Mfg. Co. of Penna.....	50,000
H. M. Lewis.....	2,000
W. H. Gilbert.....	2,000
J. Clarence White.....	2,000
Sam. J. Jones.....	2,000
Sam. S. White, Jr.....	2,000
Marks.....	60,000

5 In the course of time there were several changes in the register of the original stockholders enumerated above due to death, and the stock of a number of the aforesaid parties after death was acquired by The S. S. White Dental Manufacturing Company of Pennsylvania, the parent corporation. Under date of February 10, 1911, the Berlin Trade Register, at Berlin, Germany, was officially notified by The S. S. White Dental Manufacturing Company of Pennsylvania that it had acquired the outstanding shares of the other parties in The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, and from said date of February 10, 1911, the parent American corporation became the sole owner of all the stock of the said The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, and was the sole owner of said stock of said corporation at the time of said sequestration by the Imperial German Government on March 19, 1918.

5. The object of The S. S. White Dental Manufacturing Company of Pennsylvania, the parent corporation, in organizing The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Ger-

The S. S. White Dental Mfg. Co.

[Extracts from minutes]

Stated meeting, board of directors, July 29, 1918. The S. S. White Dental Mfg. Co. m. b. h., Berlin

Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

10	A-19, capital stock-----	\$15,000.00
	B-28, furniture and fixtures-----	7,046.28
	B-17, open accounts-----	\$127,670.75
	Less formerly adjusted-----	18,952.67
		<hr/> 108,718.06
		<hr/> \$130,764.34

and

Whereas in 1916 there was charged, as a reserve against this amount the sum of \$20,000; and

Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

Resolved, That additional reserves be set up on the following basis, viz., \$15,000 quarterly, beginning March, 1918, until liquidated.

* * * * *

9. After the hearing on December 28, 1921, in the Internal Revenue Bureau between representatives of this corporation and representatives of the Income Tax Unit, the matter of this corporation's Berlin loss was again referred to a field agent, Paul D. Helfrich, of the Bureau of Internal Revenue, and under date of August 16, 1922, said field agent submitted his report and referred to this corporation's Berlin loss as follows:

11

" SCHEDULE 10 (A)

" Explanation of items changed

"(a) Loss, Berlin branch, is fully explained in report of Nov. 18, 1921, and disallowed, since no evidence has been submitted to show that the stock or investment was worthless."

10. In a letter of the Income Tax Unit of the Bureau of Internal Revenue dated December 21, 1922, this corporation's claim for its Berlin loss was disallowed and under date of January 5, 1923, another letter was addressed to this corporation by the said Income Tax Unit explaining why this corporation's Berlin loss deducted in its United States income and profits tax return for 1918 was disallowed stated the following:

"As pointed out to your representative in conference, the major portion of the tax is attributable to the disallowance of the loss of

\$110,764.34, claimed on account of the sequestration of your property located in Berlin, Germany, by the German Government. Careful consideration has been given to statements made both orally and in your briefs respecting the deduction in question. This office has reached the conclusion, however, that the loss was not definitely determined or ascertained during 1918, and for that reason does not meet the requirements of the statute. Property sequestered by this country and Germany during the recent war has been in most cases returned to its former owners. In the instant case the property has already been returned to you by the German Government. In view of the above, this office has disallowed the loss claimed."

11. This corporation under date of January 24, 1923, appealed from the decision of the Income Tax Unit of the Bureau of Internal Revenue heretofore set forth in paragraph 10 of this petition to the committee on appeals and review of the Bureau of Internal Revenue and pressed with earnestness its claim for deduction of its said Berlin loss in 1918 before that body, both orally and in writing, and under date of May 12, 1923, said committee on appeals and review sustained the decision of the Income Tax Unit denying the Berlin loss of this corporation and in its decision said in part:

"Upon careful consideration of all the evidence and argument presented orally and by brief, the committee finds itself unable to sustain the appellant's contention on the first point. It is the committee's opinion that the act of sequestration in 1918, in and of itself, did not result in an actual sustained loss in that year, which loss was susceptible of being measured in dollars and cents. It is also the committee's opinion, and this seems to be borne out by subsequent events, that by such act the appellant was temporarily dispossessed of property and investment in the Berlin branch with a consequent cessation of business and inability to realize possible profits during the indefinite period of sequestration. It is apparent that concurrent with the act of sequestration, there arose a right or claim against the German Government for loss or damage resulting therefrom, which right or claim at the time could not be estimated as to value by any reasonable process of calculation. Losses to be deductible must ordinarily be evidenced by a completed, or closed, transaction. Before a loss sustained during a taxable year and not compensated for by insurance or otherwise may be deducted, it must usually be evidenced by such a transaction. (Article 141, Regulations 45.) In the instant case the appellant had in 1918 a reasonable expectancy of the return of the Berlin property and business at the expiration of the period of sequestration; it became repossessed of the Berlin property and business in 1920; it sold such property and business in 1922; and it has now on file a claim for reimbursement due to loss occasioned by such sequestration."

12. Under date of September 5, 1923, this corporation received notice of assessment of \$83,813.59 from J. G. Bright, Deputy Com-

missioner of Internal Revenue, as tax on said Berlin loss of this corporation. (Exhibit C.)

13. Amended notice and demand, dated November 7, 1923, for payment to the United States of income and profits taxes in the amount of \$83,813.59 was received by this corporation from Blakely D. McCaughn, United States collector of internal revenue at Philadelphia, Pennsylvania, and under date of November 14, 1923, said amount of \$83,813.59, covering tax on this corporation's Berlin loss was paid to said United States collector of internal revenue, Blakely D. McCaughn, by check B-24937 of this corporation accompanied by written protest of this corporation (Exhibit D), dated November 14, 1923, on the ground that said payment was in no way voluntary and that this corporation was compelled by the United States to pay said \$83,813.59 in taxes on its said Berlin loss under duress and coercion.

14. Immediately after paying said amount of \$83,813.59 as taxes on this corporation's Berlin loss, accompanied by its written protest, this corporation filed a claim for refund of the said amount of \$83,813.59 paid as taxes by it on its said Berlin loss before the expiration of five years from the date when the income and profits tax of 1918 of this corporation was due, on the proper form of the Bureau of Internal Revenue (Form 843) (Exhibit E), and which was filed under date of November 24, 1923, in the Bureau of Internal Revenue and in said refund claim demanded that said amount of \$83,813.59 paid by this corporation under protest should be refunded by the United States to this corporation for the following reasons:

15. "Said amount of \$83,813.59 paid to the United States as shown by internal revenue receipt attached hereto should be refunded to this taxpayer, as said amount paid is based upon an erroneous and illegal assessment, as said assessment is based upon committee on appeals and review recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918 amounting to \$130,764.34 by reason of sequestration of its property 'The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany,' by the Imperial German Government, be disallowed. This taxpayer contends that it should not have been required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of September 5, 1923, signed by J. G. Bright, deputy commissioner, initialed IT:CA:M-2. CEO-2114-4-App. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of section 234 of the revenue act of 1918 and therefore the amount of \$83,813.59 is refundable to it."

15. The Commissioner of Internal Revenue under date of May 15, 1924, rejected the said refund claim (Exhibit F), filed by this

corporation on November 24, 1923, for the recovery of the \$83,813.59 paid as taxes by this corporation under protest on its Berlin loss.

16 This corporation insists that the rejection of its said refund claim by the Commissioner of Internal Revenue on May 15, 1924, is erroneous and unjust and not warranted by law, as this corporation strongly insists that it has conclusively shown to the Commissioner of Internal Revenue that its Berlin loss set forth in its United States income and profits tax return and amended income and profits tax return for the year 1918 was an actual and deductible loss sustained in 1918 and not compensated for by insurance or otherwise in 1918, under subsection 4 of section 234 of the 1918 internal revenue act for

"(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise."
are deductible losses.

The confiscation of this taxpayer's property on March 19, 1918, by the Imperial German Government, the setting up of reserves by this corporation on July 29, 1918, to take care of its Berlin loss occasioned by the said act of confiscation by the Imperial German Government on March 19, 1918, and the writing off of its said Berlin loss on its books by this corporation in 1918, which was sustained by it in 1918, as well as deducting its said Berlin loss in its United States income and profits tax return and amended income and profits tax return for 1918, and that its said Berlin loss
17 was not compensated for by insurance or otherwise in 1918, this corporation by the aforesaid strongly insists that it has shown a full compliance with subsection 4 of section 234 of the internal revenue act of 1918 in the deduction of its said Berlin loss in its United States income and profits tax return and amended income and profits tax return for the year 1918.

17. That no action upon your petitioner's foregoing claim has been had before Congress. That said refund claim in the amount of \$83,813.59, based on this corporation's Berlin loss, was presented to the United States Commissioner of Internal Revenue, Treasury Department, and that the total amount of said refund claim of \$83,813.59 was rejected by the United States Commissioner of Internal Revenue, and your petitioner, prior to filing refund claim, protested against the payment of the said amount of \$83,813.59 to Blakely D. McCaughn, United States collector of internal revenue at Philadelphia, Pennsylvania, in writing at the date of payment of the said amount of \$83,813.59, but to no avail, and the said United States Commissioner of Internal Revenue adheres to his said action of rejection. That no transfer or assignment of said claim or any part thereof or interest therein has been made. That said claim is now owned by your claimant, and no other person or corporation is

the owner thereof or is interested therein, and that your petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs; that your claimant has at all times borne true allegiance to the United States, and has not in any way voluntarily abetted or given encouragement to rebellion against said Government.

PRAYERS

Wherefore your claimant prays:

1. That the court will render a judgment against the United States in favor of your claimant for the payment by the United States to your claimant of the said sum of eighty-three thousand eight hundred and thirteen dollars and fifty-nine cents (\$83,813.59), with interest at the rate of six per cent (6%) per annum from November 14, 1923, the date of the payment of the said amount of \$83,813.59 by claimant to the United States.

2. That your claimant may have such other and further relief as the nature of the case may require and to the court may seem meet and proper.

THE S. S. WHITE DENTAL MANUFACTURING
COMPANY OF PENNSYLVANIA,

By FRANK H. TAYLOR, *President*.

JOHN F. MCCARRON, *Attorney of Record*.

JOHN HAMPTON BARNES, *Of Counsel*.

19 . [Duly sworn to by Frank H. Taylor; jurat omitted in printing.]

20 Subscribed and sworn to before me this 22nd day of July,
A. D. 1924.

WILLIAM J. RUSSELL,
Notary Public, State of Pennsylvania.

My commission expires March 9, 1927.

2016

Exhibit A to petition

(COPY)

DELIVER OR SEND
THIS RETURN
TO COLLECTOR OF
INTERNAL REVENUE
ON OR BEFORE
MARCH 15, 1919

IF EXTENSION OF
TIME FOR FILING RETURN
HAS BEEN GRANTED
THE AUTHORIZATION
MUST BE ATTACHED TO
THIS RETURN

Original Return
Page 1—Summary
Form 1180—UNITED STATES INTERNAL REVENUE SERVICE

CORPORATION INCOME AND PROFITS TAX RETURN

FOR CALENDAR YEAR 1918

OR

Fiscal Period begun _____, and ended _____, 1918

(Print plainly corporation's name and principal place of business)

The S. S. White Dental Mfg. Company,
211 S. 12th Street,
Philadelphia, Pennsylvania.

Filed by _____
Attested by _____

DO NOT WRITE IN THIS SPACE

PAYMENT

CASH _____

CHECK _____

M. O. _____

CERT. OF PAY. _____

(Cashier's Stamp)

SCHEDULE I—NET INCOME.

Item	1918	1917	1916	1915
1. Net Income for Each Fiscal Year (as finally determined on income returns)	\$ 463,898.42	\$ 517,729.78	\$ 171,473.26	
2. Plus amount of corporation credits tax paid in each year	\$ 872.48	\$ 600.98	\$ 127.50	
3. Totals for 1913, 1912, and 1911	\$ 470,470.90	\$ 522,346.76	\$ 174,600.76	
4. Less dividends received in 1918			\$ 174,600.76	
5. Net Total for 1913			\$ 302,475.14	
6. Average Net Income for Previous Periods (sum of items on line 3 for 1911 and 1912 and item 5 for 1913, divided by number of years)			\$ 302,475.14	
7. Net Income for Taxable Year (Item 3, Schedule A, page 2)			\$ 662,280.91	

SCHEDULE II—INVESTED CAPITAL.

Item	1918	1917	1916	1915	Taxable Year
1. Capital, surplus, and undivided profits at the close of the preceding year as shown by corporation's books before any adjustments are made (Schedule B, item 1)	\$ 5,724,263.55	\$ 5,540,252.93	\$ 5,557,999.77	\$ 5,867,431.28	
2. Plus adjustments by way of additions (from Schedule B)	\$ 5,324,263.55	\$ 5,550,269.28	\$ 5,557,999.77	\$ 5,867,431.28	
3. Less adjustments by way of deductions (from Schedule B)	\$ 5,324,263.55	\$ 5,550,269.28	\$ 5,557,999.77	\$ 5,867,431.28	
4. Balance	\$ 5,324,263.55	\$ 5,550,269.28	\$ 5,557,999.77	\$ 5,867,431.28	
5. Plus or minus changes in invested capital during year (from Schedule B, item 2)	\$ 3,973.46	\$ 3,972.50	\$ 4,413.53	\$ 2,778.52	
6. Total (see Schedule B)	\$ 5,328,237.01	\$ 5,554,241.78	\$ 5,562,413.30	\$ 5,870,209.79	
7. Less deduction on account of nondeductible assets (from Schedule B)				\$ 600,654.78	
8. Invested Capital for Each Year	\$ 5,328,237.01	\$ 5,554,241.78	\$ 5,562,413.30	\$ 5,269,554.98	
9. Average Invested Capital for Previous Periods (sum of items on line 8 for 1911, 1912, and 1913 divided by number of years)				\$ 5,261,220.47	

SCHEDULE III—EXCESS PROFITS AND WAR PROFITS CREDITS.

(If this return is made for a period less than a full year, items 2 and 3 must be reduced as provided in paragraph 1, page 1 of Instructions.)

Item	1918	1917	1916	1915
1. Eight per cent of invested capital for taxable year (Item 8, Schedule B)	\$ 426,258.96	\$ 469,420.58	\$ 323,475.14	\$ 323,475.14
2. Exemption (\$3,000)	\$ 3,000.00			
3. Excess Profits Credit (Item 1 plus Item 2)	\$ 429,258.96	\$ 469,420.58	\$ 323,475.14	\$ 323,475.14
4. Average net income for previous period (Item 6, Schedule I)				\$ 302,475.14
5. The 1% of increase of income 10% of decrease shown by Item 1, Schedule I				\$ 30,247.51
6. (a) Total of (a) Deductions (Items 4 and 5, and (b) 10% of investment credit for taxable year (Item 8, Schedule B, item 2), whichever is larger				\$ 30,247.51
7. Exemption (\$3,000)				\$ 3,000.00
8. War Profits Credit (Item 6 plus Item 7)				\$ 26,247.51

SCHEDULE IV—COMPUTATION OF TAXES.

(If this return is for a period less than a full year, items 1 and 2 must be reduced as provided in paragraph 1, page 1 of Instructions.)

Item	1918	1917	1916	1915
1. Income	\$ 470,470.90	\$ 522,346.76	\$ 174,600.76	\$ 302,475.14
2. Net cost 10% of invested capital	\$ 532,426.35	\$ 555,026.92	\$ 555,799.97	\$ 586,743.12
3. Total	\$ 1,002,897.25	\$ 1,077,373.68	\$ 730,399.73	\$ 893,218.26
4. Net income for taxable year (Item 7, Schedule I)	\$ 662,280.91	\$ 717,729.78	\$ 171,473.26	\$ 302,475.14
5. Less amount of war profits credit (Item 8, Schedule III)	\$ 429,258.96	\$ 469,420.58	\$ 323,475.14	\$ 323,475.14
6. Balance	\$ 233,021.95	\$ 248,309.20	\$ 147,998.12	\$ 302,475.14
7. Total War Profits and Excess Profits Tax as computed under Section 302 (a) (Item 6 column 6 plus Item 4)				\$ 31,651.19
8. Total War Profits and Excess Profits Tax, or Fractional Excess Profits Tax, as computed under Section 302 (b) (Item 6 column 6 plus Item 4)				\$ 31,651.19
9. Income Tax				
10. Proportionately taxable year (Item 7, Schedule I)	\$ 462,320.91	\$ 517,729.78	\$ 171,473.26	\$ 302,475.14
11. Tax of 1% on Item 10				\$ 3,024.75
12. Item 10 or Item 11 plus Item 11				\$ 3,024.75
13. Less income, war profits, and excess profits taxes paid or accrued in foreign countries on income arising from such sources, and in payment of the United States (see Sections 123 and 240 of the Revenue Act of 1913)				\$ 132,662.27
14. Total War Profits, Excess Profits, and Income Taxes (sum of items 7 and 12 minus Item 13)				\$ 132,662.27
15. Total tax for year 1918 (see Item 14)				\$ 132,662.27
16. Total tax for year 1918 (see Item 14)				\$ 132,662.27
17. Total tax for year 1918 (see Item 14)				\$ 132,662.27
18. Total tax for year 1918 (see Item 14)				\$ 132,662.27
19. Total tax for year 1918 (see Item 14)				\$ 132,662.27
20. Total tax for year 1918 (see Item 14)				\$ 132,662.27
21. Total tax for year 1918 (see Item 14)				\$ 132,662.27
22. Total tax for year 1918 (see Item 14)				\$ 132,662.27
23. Total tax for year 1918 (see Item 14)				\$ 132,662.27
24. Total tax for year 1918 (see Item 14)				\$ 132,662.27
25. Total tax for year 1918 (see Item 14)				\$ 132,662.27
26. Total tax for year 1918 (see Item 14)				\$ 132,662.27
27. Total tax for year 1918 (see Item 14)				\$ 132,662.27
28. Total tax for year 1918 (see Item 14)				\$ 132,662.27
29. Total tax for year 1918 (see Item 14)				\$ 132,662.27
30. Total tax for year 1918 (see Item 14)				\$ 132,662.27
31. Total tax for year 1918 (see Item 14)				\$ 132,662.27
32. Total tax for year 1918 (see Item 14)				\$ 132,662.27
33. Total tax for year 1918 (see Item 14)				\$ 132,662.27
34. Total tax for year 1918 (see Item 14)				\$ 132,662.27
35. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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65. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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71. Total tax for year 1918 (see Item 14)				\$ 132,662.27
72. Total tax for year 1918 (see Item 14)				\$ 132,662.27
73. Total tax for year 1918 (see Item 14)				\$ 132,662.27
74. Total tax for year 1918 (see Item 14)				\$ 132,662.27
75. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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79. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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81. Total tax for year 1918 (see Item 14)				\$ 132,662.27
82. Total tax for year 1918 (see Item 14)				\$ 132,662.27
83. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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88. Total tax for year 1918 (see Item 14)				\$ 132,662.27
89. Total tax for year 1918 (see Item 14)				\$ 132,662.27
90. Total tax for year 1918 (see Item 14)				\$ 132,662.27
91. Total tax for year 1918 (see Item 14)				\$ 132,662.27
92. Total tax for year 1918 (see Item 14)				\$ 132,662.27
93. Total tax for year 1918 (see Item 14)				\$ 132,662.27
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95. Total tax for year 1918 (see Item 14)				\$ 132,662.27
96. Total tax for year 1918 (see Item 14)				\$ 132,662.27
97. Total tax for year 1918 (see Item 14)				\$ 132,662.27
98. Total tax for year 1918 (see Item 14)				\$ 132,662.27
99. Total tax for year 1918 (see Item 14)				\$ 132,662.27
100. Total tax for year 1918 (see Item 14)				\$ 132,662.27

Page 6—Invested Capital Schedules (Concluded) and Questions.

SCHEDULE L—INADMISSIBLE ASSETS.

Has the corporation any inadmissible assets (i. e., stocks, bonds, and other obligations,

except obligations of the United States, the income from which is not taxable)?

If so, attach hereto a statement showing for 1911, 1912, 1913, and the taxable year,

separately, the income from the assets in (a) to (j) of this schedule.

If the income from such assets consists in part of gain or profit from the sale or other

disposition thereof, or if all or part of the income derived from such assets is in effect

included in the net income because of the limitation on the deduction of interest under

Section 254 (a) (2) of this Revenue Act of 1913, then a corresponding part of the capital

invested in such assets is deemed to be inadmissible assets. In such case, set forth in detail—

(a) The various kinds of income derived from such assets and the computation of the

part of the capital invested therein which is deemed an inadmissible asset.

For the purpose of this schedule, inadmissible assets shall be valued at cost of acquisition

as well as if the taxpayer has in previous years been allowed a deduction on account

of the loss in the market value of securities, such assets shall be valued at cost, less the deduction

allowed. Admissible assets shall be valued as provided in Sections 108, 109, and 111

of the Revenue Act of 1913 and Articles 31, 32, 33, 34, and 35 of Regulations 11. The

average amount of assets of each kind held during any year may ordinarily be determined

by dividing by 3 the sum of the amount of such assets held at the beginning of the year

KIND OF BUSINESS.

1. Explain below the nature of the corporation's business in sufficient detail to show

in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and

related industries; (3) manufacturing; (4) construction; (5) trading; (6) transportation;

(7) service; (8) other services; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 8, state the special product or

products handled; if in class 9, state whether wholesale or retail; or both. If in class 1, state

whether rail, water, or other; whether general or local, and the special transportation (if

any); if in class 2, state the special transportation (if any); or the special

kind of service rendered; if in class 3, state the branch of banking or insurance engaged in.

3. In all case state whether the corporation acts as principal (using its own capital)

or as agent or broker (on commission) or as both.

(a) Main business—Manufactures and sale of Dental Supplies(b) Collateral businesses, if any—NONE

OTHER CONCERNS IN SAME BUSINESS.

4. Enter on the following lines the names and addresses of five representative corpora-

tions in your locality or section of the country engaged in the same kind of business:

The L. D. CAINE COMPANY, Milford, Dela.

S. J. Jett & Sons, Philadelphia, Pa.

The Dentists Supply Co., York, Pa.

The Hittler Dental Mfg. Co., Rochester, N. Y.

The Cleveland Dental Mfg. Co., Cleveland, Ohio.

INCORPORATION.

5. Date of incorporation—July 1st, 19016. Under the laws of what State or country?—Pennsylvania

PREDECESSOR BUSINESSES.

7. If the corporation was not in existence during the whole of any one of the calendar

years 1911-1913, in the business substantially a continuation of a business carried on during

any one or more of these years? Yes If so, give name under which, and

address at which, the business was then carried on—

ACQUISITION OF MIXED AGGREGATES OF ASSETS.

8. Did the corporation ever take over a going business or otherwise acquire a mixed

aggregate of tangible property, patents and copyrights, and good will and other intangible

property, and pay for such property in whole or in part with stock or other

securities? No

9. If so, submit a statement showing—

(a) The name of the concern taken over (or from which the property was

acquired);

(b) The nature of the assets and liabilities so acquired;

(c) The total fair value of the stock issued therefor;

(d) The value at which each class of assets was carried on the books of the concern

from which acquired (if obtainable submit a balance sheet of the prede-

cessor corporation as of the date of acquisition);

(e) The value at which each item was carried on the books of the corporation

making this return.

10. If patents, copyrights, secret processes or formulas, good will, trade-marks, trade

brands, franchises, or other intangible property were acquired, state also the items on which

their value was determined and how they were paid for.

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for him

deponent and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his

knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1913 and the Regulations issued thereunder.

Signed to and sub-

scribed before me this 11th day of June, 1913.

Not a public officer holding official position.

and the amount held at the end of the year. In such case the amount of inadmissible assets

may best be determined from (1) the balance sheet as of the beginning of the year

adjusted with respect to the items in Schedules F and G, and (2) the balance sheet at the

end of the year correspondingly adjusted. But if at any time during the year a

material change has taken place in the amount of such assets, the average amount must be

determined as provided in Article 31 of Regulations 11. In such case, state in detail—

(a) The computation of such amount.

(b) Amount of inadmissible assets held at beginning of the year.

(c) Amount of inadmissible assets held at end of year.

(d) Amount of inadmissible assets held at beginning of the year.

(e) Amount of inadmissible assets held at end of year.

(f) Amount of inadmissible assets held during year.

(g) Sum of (a) plus (f).

(h) Percentage which (g) is of (f).

The percentage (h) for each year should be applied to the figure for that year appearing

on line 7, Schedule 11, in order to obtain the deduction on account of inadmissible assets,

which should be entered on line 8, Schedule 11.

QUESTIONS.

ATTENTIONS WITH OTHER CORPORATIONS (TO BE ANSWERED BY EVERY CORPORATION).

11. Do you own directly or control, through closely affiliated interests or by a partner

or otherwise over 50 per cent of the outstanding capital stock of another corporation or of

another corporation? NO. DENIAL OF CORPORATION

12. Is over 50 per cent of your capital stock owned by another corporation or by two

or more corporations that are affiliated? NO

13. Is over 50 per cent of your capital stock as well as over 50 per cent of the capital

stock of another corporation owned or controlled by the same indi-

vidual or partnership or by the same individuals or partnerships? NO

14. Is this return a consolidated return within the meaning of Articles 31 to 35, b

chapter, of Regulations 47? NO

15. Affiliated corporations as indicated in 11, 12, or 13 above must comply with the

following requirements:

(a) If the answer to question 11 is "yes," submit a statement showing for each of the

corporations over 50 per cent of whose stock is owned or controlled by you, either directly

or through closely affiliated interests or by a partner or otherwise—

(a) The name and address;

(b) The total fair value of the outstanding capital stock at the beginning of the

taxable year, and the date and amount of each change therein;

(c) The total fair value of each outstanding capital stock owned or controlled by you at the

beginning of the taxable year, or at the date of acquisition if

acquired during the taxable year, and the date and amount of each change therein.

16. If the answer to question 12 is "yes," state—

(a) The name and address of each corporation or corporation;

(b) The fair value and percentage of your stock held by each;

(c) The name and address of each corporation;

(d) The name or names and address or addresses of the owner or owners

of interest;

(e) The total fair value of the outstanding capital stock of each corporation at the

beginning of the taxable year, and the date and amount of each change therein;

(f) The total fair value of the outstanding capital stock of each corporation owned or

controlled by each owner of the stock at the beginning of the taxable year, or at the date of

acquisition if acquired during the taxable year, and the date and amount of each change therein.

17. If the answer to question 13 is "yes," the information furnished under 11 and 12

should identify the corporations involved in the consolidation.

18. If two corporations own 50 per cent or more of the stock of another, or if two or

more of the stock of two or more corporations is owned by the same individual or individuals

or individuals, it is substantially the same corporation, a consolidated return must be filed, even

if the fair value as so consolidated under Article 35 need be shown. If the ownership is less than 50 per cent, but exceeds 10 per cent, the parent corporation or

parent corporations of any group of affiliated corporations must furnish the information called

for above and in addition must file a statement fully disclosing the details of affiliation and

thus stock ownership and all other information which will be helpful in determining whether or not a consolidated return should be filed.

VALUATION OF CAPITAL STOCK.

21. What was the fair value of the total capital stock of the corporation as determined

in the last assessment of the capital stock tax (if any)? \$429,245.80 Date of theassessment—June 30, 1913

LIST OF ATTACHED SCHEDULES.

Write below a list of all schedules attached to this return, giving for each a brief title

and the schedule number.

Analysis of Cost of goods sold A-2

Other Income A-3

Interest on Liberty Bonds A-4 (1-2)

Interest received A-5

Ordinary and necessary expenses A-12

Officials salaries A-13

Repairs A-14

Depreciation A-15

Losses not covered by insurance A-15-24

List of stock holding employees C (1-2)

Balance Sheets C (1-2)

Analysis of Surplus Account D (1-2)

President.

Treasurer.

(Official receipt.)

1-20

SCHEDULE A4 - Part 2.

Interest on First $3\frac{1}{2}$ Liberty Loan \$ 64.87

SCHEDULE A5

Notes Receivable & Bank Deposits \$ 11,416.06

SCHEDULE A12.

Salaries	705,171.10
Traveler's Expenses	111,858.52
Advertising Expenses	223,562.86
Developments & Betterments (Mech. Experimental Expenses)	144,682.96
Freight, Express & Cartage	55,318.87
Insurance	15,145.19
Rents	72,201.54
Supplies	30,356.27
Interest & Discount Payable	98,541.20
Miscellaneous	177,938.95
Moving Expenses	<u>28,643.71</u>
Total	\$ 1,663,421.17

SCHEDULE A13.

Name	Duties	Time devoted to such duties	Shares of stock owned	1916	Total Annual Compensation 1917	1918	Reasons for Increase
Frank H. Taylor, President		Entire	125	\$15,000.	\$16,000.	\$18,000.	As agreed at time of em- ployment
Edwin T. Hinkson, Treasurer		"	115	8,000.	8,000.	8,000.	
E. L. Vaill, Secretary		"	42	4,000.	4,333.33	4,750.	Normal one
						<u>\$ 30,750.</u>	

SCHEDULE A14.

Repairs to Buildings and Factory Equipment	\$ -
Twelfth St. Factory	2,002.27
Frankford "	4,053.85
Staten Island "	48,533.27
C & M Division Factory	6,647.84
Porcelain Tooth	1,080.51
Head Office - 211 South 12th Street	8,536.92
Philadelphia Retail Store	284.10
Atlanta " "	65.11
Chicago " "	246.17
New York " "	393.63
San Francisco " "	87.59
Boston " "	<u>354.76</u>
	\$ 72,286.01
Less Excess Credit to Reserve for Repairs	<u>751.23</u>
2-S-0	Total \$ 71,534.78

SCHEDULE A16.

(1) (a) Character	(2)	(3)	(4)
1. Buildings -			
2. 12th St. Factory	\$ 258,420.01	179,520.50	50 years
3. Frankford "	135,016.62	2,127.46	
4. Staten Island "	176,651.37	91,652.07	
5. Machinery & Equipment			10 years
7. 12th St. Factory	96,942.29	19,662.37	Transferred to Item 11
8. Frankford "	38,354.34	42,147.38	
9. Staten Island Factory	410,385.39	401,616.21	
10. C & M "	32,885.25	76,469.11	
11. Porcelain Tooth "	-	116,974.62	
12. Head Office and			
13. Philadelphia Store	64,315.54	103,523.06	
14. Atlanta Store	9,086.13	4,261.67	
15. Berlin "	6,784.01	2,846.83	Transferred
16. Boston "	7,467.30	1,067.90	
17. Chicago "	13,451.17	6,650.75	
18. Cincinnati "	9,074.56	2,500.25	Transferred to Item 13
19. Los Angeles Store	2,367.11	1,954.10	" " " 13
20. New Orleans "	4,213.40	2,290.02	" " " 13
21. New York "	17,275.38	3,450.89	
22. Rochester "	2,008.75	1,252.45	" " " 13
23. San Francisco "	5,572.89	6,211.14	
24. Toronto "	5,492.13	988.77	
Total	\$ 1,293,780.64	1,004,170.09	

	(5)	(6)	(7)	(8)	
1.	\$ 437,940.51	13,039.06	10,446.33	22,485.39	415,455.12
2.	137,144.08	4,050.50	4,201.92	8,252.42	129,891.66
3.	268,503.44	8,732.44	7,261.97	12,994.41	256,509.03
4.					
5.					
6.	77,279.92	39,527.27	5,008.08	44,535.35	32,744.67
7.	80,501.72	23,964.51	6,402.84	30,367.35	50,134.37
8.	612,001.60	222,789.49	62,561.29	285,350.78	525,650.82
9.	109,384.36	22,366.70	9,145.79	31,532.49	77,821.67
10.	116,974.62	2,618.32	13,051.65	15,670.17	101,304.65
11.					
12.					
13.	167,636.60	52,332.07	13,928.46	66,260.53	101,376.07
14.	13,347.70	5,630.66	1,102.25	6,732.91	6,614.79
15.	3,935.18	3,935.18	-	3,935.18	-
16.	8,555.20	4,646.64	657.59	5,304.23	3,250.97
17.	20,101.92	7,351.45	1,761.26	9,092.71	11,009.21
18.	6,574.33	6,574.33	-	6,574.33	-
19.	403.01	403.01	-	403.01	-
20.	1,917.38	1,917.38	-	1,917.38	-
21.	20,726.27	8,209.89	1,702.67	9,912.56	10,813.71
22.	756.30	756.30	-	756.30	-
23.	11,784.03	4,411.65	892.19	5,303.84	6,480.19
24.	2,510.36	2,510.36	-	2,510.36	-
Total	2297,950.73	431,767.21	138,124.49	569,891.70	1,726,059.03

Average life of factory equipment is est.
 at 10 yrs. 2 mos. 1917 because of improvements
 in Machy. & new methods of Mfg.

3-5-0

SCHEDULE C.		Taxable Year	
Assets:		12/31/17 Beginning	12/31/18 End
Cash		\$ 169,925.15	307,750.42
Trade Accounts & Notes Receivable		1,367,369.02	1,362,922.95
Accounts Payable Debit Balances		-	10,644.94
Inventories: work in progress		860,167.40	860,887.53
Raw Materials		879,841.22	696,076.53
Finished Products		1,281,686.72	1,856,835.08
Pr. Metals Scrap		45,636.34	46,621.18
First Liberty Loan		1,447.33	1,447.33
Second " "		100,000.00	4,462.92
Third " "		-	106,450.00
Fourth " "		-	104,800.00
Bonds Dom. of Canada 5th Loan		235,047.60	400.00
Deferred charges to future operations		-	21,941.30
Fixed Assets:	End of Yr.		
Land	247,000.00		
Buildings	703,714.99		
Machinery		839,586.03	
Tools & Minor equip.	1,072,267.35	1,199,371.20	
Delivery equip.			
Office Furniture			
Total	2,022,982.34	2,266,969.23	
Less reserve for Depreciation	175,271.96	310,900.50	
Net Value	1,847,710.38	1,976,059.05	
Patents, good will, and other tangible assets:			
Paid for in cash or other tangible property		36,000.00	65,300.00
Investments Affiliated Companies		509,718.08	201,000.00
Total		7,175,568.16	7,309,699.21

0-5-9

SCHEDULE 0.

Liability Insurance

Notes Payable:	\$	990,000.00	760,000.00
To Others (Includ. Bank Loans)			
Accounts Payable:			
Trade		139,248.39	90,192.22
Other		86,966.01	110,816.21
Accrued Taxes		40,519.98	157,168.50
Accrued Payroll		15,225.35	19,086.66
Miscellaneous Accruals		7,995.16	750.00
Reserve for losses on notes and accounts receivable		57,432.54	57,119.61
Reserves for Contingencies		100,000.00	100,000.00
" Shrinkage in Inventories		-	124,974.02
" " Repairs		-	751.23
Mortgage Payable		6,000.00	-
Capital Stock Outstanding -			
Common		5,000,000.00	5,000,000.00
Surplus and Undivided Profits		<u>730,199.71</u>	<u>919,060.76</u>
Total	\$	7,173,586.14	7,339,699.21

7-5-0

Sheet 2.

STATEMENT DFor Year 1914

Surplus at begin. of year per books		\$	429,473.13
Add: Total net profit per books			<u>76,452.82</u>
	Total		505,925.95
Deduct: Dividends as follows:			
	<u>Date Payable</u>	<u>Amount</u>	
Cash	May 1, 1914	75,000.00	
"	Aug. 1, 1914	75,000.00	
"	Nov. 1, 1914	25,000.00	
"	Feb. 1, 1915	<u>25,000.00</u>	<u>200,000.00</u>
Surplus at end of year per books			305,925.95

For Year 1915

Surplus at begin. of year per books		\$	305,925.95
Add: Total net profit per books			<u>274,424.23</u>
	Total		580,350.18
Deduct: Dividends as follows:			
Cash	May 1, 1915	25,000.00	
Trans. to Reserve for Bad Debts		50,000.00	
Adjustments thru Surplus		5,866.24	
Trans. to Reserve for Contingencies		<u>100,000.00</u>	<u>180,866.24</u>
Surplus at end of year per books			399,483.94

For Year 1916

Surplus at begin. of year per books		\$	399,483.94
Add: Total net profit per books		362,585.39	
Adjustments for year		<u>10,236.27</u>	<u>372,821.66</u>
	Total		772,305.60
Deduct: Dividends as follows:			
Cash	Feb. 1, 1916	75,000.00	
"	May 1, 1916	50,000.00	
"	Aug. 1, 1916	50,000.00	
"	Nov. 1, 1916	<u>50,000.00</u>	<u>225,000.00</u>
Surplus at end of year per books			547,305.60

For Year 1917

Surplus at begin. of year per books		\$	547,305.60
Add: Total net profit per books			<u>382,693.11</u>
	Total		930,198.71
Deduct: Dividends as follows:			
Cash	Feb. 1, 1917	50,000.00	
"	May 1, 1917	50,000.00	
"	Aug. 1, 1917	50,000.00	
"	Nov. 1, 1917	<u>50,000.00</u>	<u>200,000.00</u>
			\$ 730,198.71

10-5-0

(Copy)

Annuity Return
Form 100—UNITED STATES INTERNAL REVENUE SERVICECORPORATION INCOME AND PROFITS TAX RETURN
FOR CALENDAR YEAR 1919

Fiscal Period began January 1, 1918, and ended December 31st, 1919

(Print plainly corporation's name and principal place of business)

The S. S. White Dental Mfg. Co.,
231 South 12th Street,
Philadelphia, Pennsylvania.DO NOT WRITE IN THIS SPACE
PAYMENT
CASE
CHECK
IN C.
CERT. OF INC.
(Contributor's Name)DELIVER OR SEND
THIS RETURN
TO COLLECTOR OF
INTERNAL REVENUE
ON OR BEFORE
MARCH 15, 1919IF EXTENSION OF
TIME FOR FILING RETURN
HAS BEEN GRANTED
THE AUTHORIZATION
MUST BE ATTACHED TO
THIS RETURN

SCHEDULE I—NET INCOME.

1918	1919	1920
1. Net Income per Return Payable Year (as finally determined on income return)	\$ 656,678.43	\$ 717,720.79
2. Plus amount of corporation excise tax paid in each year	\$ 879.48	\$ 600.95
3. Totals for 1918, 1919, and 1920	\$ 661,466.21	\$ 722,568.73
4. Less dividends received in 1919		\$ 774,600.78
5. Net Total for 1919		\$ 774,600.78
6. Average Net Income per Payable Period (sum of items on line 5 for 1918 and 1919 and item 5 for 1920, divided by number of years)		\$ 774,600.78
7. Net Income per Taxable Year (Item 5, Schedule A, page 7)		\$ 774,600.78

SCHEDULE II—INVESTED CAPITAL.

1918	1919	1920	TOTAL
1. Capital, surplus, and undivided profits less than of the preceding year or share of corporation's stock in any of the preceding or same business (from Schedule A)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
2. Plus adjustments by way of additions (from Schedule A)	\$ 879.48	\$ 600.95	\$ 1,484,880.65
3. Totals	\$ 658,557.91	\$ 724,321.74	\$ 1,382,879.65
4. Less adjustments by way of deductions (from Schedule A)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
5. Balance	\$ 2,879.48	\$ 6,600.95	\$ 9,480.63
6. Plus or minus change in invested capital during year (from Schedule A and B)	\$ 661,466.21	\$ 722,568.73	\$ 1,384,034.94
7. Total (on Balance)	\$ 664,345.69	\$ 729,169.68	\$ 1,393,515.37
8. Less deduction on amount of loanable assets (from Schedule A)	\$ 662,566.85	\$ 726,436.40	\$ 1,389,003.25
9. Invested Capital per Taxable Year	\$ 662,566.85	\$ 726,436.40	\$ 1,389,003.25
10. Average Invested Capital per Payable Period (sum of items on line 9 for 1918, 1919, and 1920 divided by number of years)		\$ 726,436.40	\$ 1,389,003.25
11. Increase or Decrease in Invested Capital per Taxable Year as Compared with Average Payable Invested Capital (Indicate decrease by "D")		\$ 262,566.85	\$ 262,566.85

SCHEDULE III—EXCESS-PROFITS AND WAR-PROFITS CREDITS.

(If this return is made for a period less than a full year, Items 6 and 8 must be reduced as provided in paragraph 1, page 1 of Instructions.)

1918	1919	1920	TOTAL
1. Right per cent of invested capital for taxable year (Item 6, line income, but exclude 11)	\$ 672,909.09	\$ 726,436.40	\$ 1,399,345.49
2. Exemption (\$1,000)	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
3. Excess-Profits Credit (Item 1 plus Item 2)	\$ 675,909.09	\$ 729,436.40	\$ 1,405,345.49
4. Average net income for period (Item 6, Schedule I)	\$ 717,720.79	\$ 774,600.78	\$ 1,492,321.57
5. Plus 10% of increase or minus 10% of decrease above by Item 3, Schedule I	\$ 717,720.79	\$ 774,600.78	\$ 1,492,321.57
6. (a) Total on (on Excess-Profits Credit) Item 3 and 5, or (b) 10% of invested capital for taxable year (Item 8, and column, Schedule II), whichever is larger	\$ 717,720.79	\$ 774,600.78	\$ 1,492,321.57
7. Exemption (\$1,000)	\$ 3,000.00	\$ 3,000.00	\$ 6,000.00
8. War-Profits Credit (Item 6 plus Item 7)	\$ 720,720.79	\$ 777,600.78	\$ 1,498,321.57

SCHEDULE IV—COMPUTATION OF TAXES.

(If this return is for a period less than a full year the invested capital must be reduced as provided in paragraph 1, page 1 of Instructions.)

1918	1919	1920	TOTAL
1. Net over 10% of invested capital	\$ 658,557.91	\$ 724,321.74	\$ 1,382,879.65
2. Over 10% of invested capital	\$ 659,678.43	\$ 725,921.69	\$ 1,385,600.12
3. Totals	\$ 659,678.43	\$ 725,921.69	\$ 1,385,600.12
4. Net income for taxable year (Item 7, Schedule I)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
5. Less amount of war-profits credit (Item 8, Schedule III)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
6. Balance	\$ 2,879.48	\$ 6,600.95	\$ 9,480.63
7. Total War-Profits and Excess-Profits Tax as Computed Under Schedule III, 10% (on 10% of invested capital plus Item 6)	\$ 42,515.70	\$ 50,821.31	\$ 93,337.01
8. Total War-Profits and Excess-Profits Tax, or Computed Under Schedule III, 10% (on 10% of invested capital plus Item 6)	\$ 42,515.70	\$ 50,821.31	\$ 93,337.01
9. Income Tax	\$ 659,678.43	\$ 725,921.69	\$ 1,385,600.12
10. Net income for taxable year (Item 7, Schedule I)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
11. Less amount of war-profits credit (Item 8, Schedule III)	\$ 656,678.43	\$ 717,720.79	\$ 1,374,399.22
12. Balance	\$ 2,879.48	\$ 6,600.95	\$ 9,480.63
13. Total War-Profits, Excess-Profits, and Income Taxes (except in case of a split year) (Item 10 plus Item 12)	\$ 45,395.18	\$ 57,422.26	\$ 102,817.44
14. Adjustment of Tax per Fiscal Year (Item 13)	\$ 45,395.18	\$ 57,422.26	\$ 102,817.44
15. Total tax (Item 13 plus Item 14)	\$ 90,790.36	\$ 114,844.52	\$ 205,634.88
16. Less tax not already paid for the fiscal year ended in 1919	\$ 45,395.18	\$ 57,422.26	\$ 102,817.44
17. Balance of Tax	\$ 45,395.18	\$ 57,422.26	\$ 102,817.44
18. Tax paid: On refund of excessive return (Item 17), 0			
19. Total	\$ 45,395.18	\$ 57,422.26	\$ 102,817.44

Page 6—Invested Capital Schedules (Concluded) and Questions.

SCHEDULE L—INADMISSIBLE ASSETS.

Use the corporation any inadmissible assets (i. e., stocks, bonds, and other obligations).

except obligations of the United States, the income from which is not taxable?

If so, attach hereto a statement showing for 1911, 1912, and the taxable year,

separately, the facts called for in Items (a) to (j) of this schedule.

(a) The income from such assets consists in part of gain or profit from the sale or other disposition thereof, or if all or part of the income derived from such assets is not included in the net income because of the limitation on the deduction of interest under Section 204 (a) (2) of the Revenue Act of 1913, then a corresponding part of the capital

included in such assets is deemed an inadmissible asset. In such case, set forth in detail

(b) The various kinds of income derived from such assets and the computation of the

part of the capital invested therein which is deemed an inadmissible asset.

For the purpose of this schedule, inadmissible assets shall be valued at cost of acquisition

except that if the taxpayer has in previous years been allowed a deduction on account

of the loss in the market value of securities, such assets shall be valued at not less than the

deduction allowed. Admissible assets shall be valued as provided in Sections 225, 226, and 227

of the Revenue Act of 1913 and Articles 252, 400, 451, and 541 of Regulations 45.

Average amount of assets of each kind held during any year may only be determined

by dividing by 3 the sum of the amount of each asset held at the beginning of the year

KIND OF BUSINESS.

1. Explain below the nature of the corporation's business in sufficient detail to show

in which of the following general classes of activities it falls:

(1) Agriculture and related industries, including fishing; (2) mining, quarrying, and

related industries; (3) manufacturing; (4) transportation; (5) trading; (6) transportation;

(7) storage; (8) other service; (9) banking and insurance.

2. If the business falls in any of the classes from 1 to 9, state the special product or

products involved; if in class 1, state whether wholesale or retail; or in class 4, state

whether rail, water, or other; whether general or local, and the special commodities (if

any) transported; if in class 7, state the special commodities stored (if any); in the

special of storage; if in class 8, state in detail the kind of service rendered; if in class 9, state

the branch of banking or insurance engaged in.

3. Is all one state whether the corporation acts as principal (using its own capital)

or as agent or broker (on behalf of) in each of the following:

(a) Main business: Manufacturing and sale of dental supplies

(b) Collateral business, if any: _____

OTHER CONCERNS IN SAME BUSINESS.

4. State on the following lines the names and addresses of five representative

owners, lessors, or parties of the company engaged in the same kind of business:

L. D. Smith Co., _____, Milford, Delaware.

A. J. Smith & Sons, _____, Philadelphia, Penna.

Cleveland Dental Mfg. Co., _____, Cleveland, Ohio.

Dental Supply Co., _____, York, Penna.

Hittor Dental Mfg. Co., _____, Rochester, New York.

INCORPORATION.

5. Date of incorporation: July 1, 1911

6. Under the laws of what State or country? Pennsylvania

PREDECESSOR BUSINESSES.

7. If the corporation was not in existence during the whole of any one of the calendar

years 1911-1913, is its business substantially a continuation of a business carried on during

any one or more of those years? If so, give name under which, and

address at which, its business was then carried on: _____

ACQUISITION OF MIXED AGGREGATES OF ASSETS.

8. Did the corporation ever take over a going business or otherwise acquire a mixed

aggregate of tangible property, patents and copyrights, and good will and other

intangible property, and pay for such property in whole or in part with stock or other

securities?

9. If so, submit a statement showing—

(a) The nature of the business taken over (or from which the property was

acquired);

(b) The nature of the assets and liabilities so acquired;

(c) The total per value of the stock issued therefor;

(d) The value at which each class of assets was carried on the books of the concern

from which acquired (if obtainable submit a balance sheet of the

predecessor corporation as of the date of acquisition);

(e) The value at which each item was carried on the books of the corporation

acquiring this return.

10. If patents, copyrights, secret processes or formulas, good will, trade-marks, trade

brands, trade-names, or other intangible property was acquired, state also the date at which

their value was determined and how they were paid for.

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself

deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is to the best of his

knowledge and belief a true and complete return made in good faith pursuant to the Revenue Act of 1913 and the Regulations issued thereunder.

Sworn to and sub-

scribed before me this _____ day of _____, 19____.

Not a public officer.

(Official capacity)

and the amount held at the end of the year. In such case the amount of inadmissible assets may be determined from (1) the balance sheet at the beginning of the year

adjusted with respect to the items in Schedules F and G, and (2) the balance sheet at

the end of the year correspondingly adjusted. But if at any time during the year a cap-

ital change has taken place in the amount of such assets, the average amount must be

determined as provided in Article 503 of Regulations 45. In such case, there is dis-

tinction—

(a) The computation of such amount.

(b) Amount of inadmissible assets held at beginning of the year.

(c) Average amount of inadmissible assets held during year.

(d) Amount of inadmissible assets held at beginning of the year.

(e) Amount of inadmissible assets held at end of year.

(f) Average amount of inadmissible assets held during year.

(g) Item (d) after (f).

(h) Percentage which (a) is of (f).

This percentage (f) for each year should be applied to the figure for that year appearing

on Item 1, Schedule L, in order to obtain the correction on account of inadmissible assets

which should be entered on line 8, Schedule II.

QUESTIONS.

AFFILIATIONS WITH OTHER CORPORATIONS (TO BE ANSWERED BY EVERY CORPORATION).

11. Do you own directly or control through closely affiliated interests or by a trustee

or nominee over 10 per cent of the outstanding capital stock of another corporation or a

other corporation? _____

12. Is over 10 per cent of your capital stock held by another corporation or by one

or more corporations that are affiliated? _____

13. Is over 10 per cent of your capital stock as well as over 10 per cent of the capital

stock of another corporation or of other corporations owned or controlled by the same

individual or partnership or by the same individuals or partnerships? _____

14. Is this return a consolidated return within the meaning of Article 501, in 45, is

clusive, of Regulations 45? _____

15. Affiliated corporations as indicated in 11, 12, or 13 above must comply with the

following requirements:

(a) If the answer to question 11 is "yes," submit a statement showing for each of the

corporations over 10 per cent of whose capital stock is owned or controlled by you, either directly

or through closely affiliated interests, or by a trustee or nominee:

(b) The name and address;

(c) The total per value of the outstanding capital stock at the beginning of the

taxable year, and the date and amount of each change therein;

(d) The total per value of each outstanding capital stock owned or controlled by

you at the beginning of the taxable year, or at the date of acquisition if

acquired during the taxable year, and the date and amount of each change

therein.

17. If the answer to question 13 is "yes," state—

(a) The name and address of each corporation or corporation;

(b) The per value and percentage of your stock held by each;

18. If the answer to question 13 is "yes," submit a statement showing—

(a) The name and address of each corporation;

(b) The name and address of each of the owners or controlling

interest or interests;

(c) The total per value of the outstanding capital stock of each corporation at the

beginning of the taxable year, and the date and amount of each change

therein;

(d) The total per value of the outstanding capital stock of each corporation owned

or controlled by each owner at the beginning of the taxable year, and the date and amount of each change

therein.

19. If the answer to question 14 is "yes," the information furnished under (a) and (b)

should include the requirements indicated in the consolidation.

20. If one corporation owns 10 per cent or more of the stock of another, or if 10 per cent

or more of the stock of two or more corporations is owned by the same individual or

individuals in substantially the same proportion, a consolidated return must be filed, and

that the limitations as to consolidation under Article 503 must be observed. If the consoli-

dation is less than 10 per cent, but exceeds 10 per cent, the person, corporation, or partnership

of any group of affiliated corporations must furnish the information called

above and in addition must file a statement fully disclosing the details of affiliation for

the taxable year and all other taxable years which will be helpful in determining

whether or not a consolidated return should be filed.

VALUATION OF CAPITAL STOCK.

21. What was the fair value of the total capital stock of the corporation as determined

in the last statement of the capital stock tax (if any)? \$4,253,345.50 Date of last

statement: June 30, 1913.

LIST OF ATTACHED SCHEDULES.

Make below a list of all schedules attached to this return, giving for each a brief title

and the schedule number.

Schedules A-2 Cost of Goods Sold

A-3 Other Income

A-4 Interest on Liberty Bonds

A-5 Interest from other sources

A-12 Ordinary Expenses

A-13 Compensation of Officers

A-14 Repairs

A-15 Depreciation & Obsolescence

A-25-34 Losses

E Balance Sheet, 1917-1918

F Analysis of Surplus Account

President

Treasurer

Page 2—Income Schedules

SCHEDULE A—TAXABLE NET INCOME.

from—(a) natural corporations, banks, insurance companies, and other corporations (reported in exhibit statements of income and expenses in any national, State, municipal, or other report allowed any natural person); (b) a statement of income and expenses in the form in which submitted to such office. In such case the taxable net income will be determined by means of Schedule B with the net profit shown by the income and expense statement submitted, and should be entered on Item 7, Schedule 1, page 1.

Income section.									
1	From sales, less returns and allowances	5	7	872	712	81			
2	Less cost of goods sold, exclusive of expenses, repairs, and other items called for separately below (from Schedule A3)	6	272	328	56	2	541	394	25
3	Less income from operations other than trading or manufacturing, less allowances (from Schedule A3)						154	234	73
4	Interest on obligations of the United States or its possessions not exempt (from Schedule A4)						3	058	56
5	Interest from other sources (from Schedule A5)						11	414	06
6	Rentals							339	00
7	Dividends								
8	Share of net income earned since December 31, 1917, by joint-stock service corporations (whether received or not)								
9	Holdings on stock of foreign corporations (from Schedule A6)								
10	Less income from all other sources except dividends (not including any amount in respect of sales of capital assets or sales of investments—see Item 19, below) (from Schedule A10)								
	Total of Items 1 to 10						2	750	508 50
DEDUCTIONS.									
11	Delivery and necessary expenses (except amounts reported in Item 1 above or called for separately below, and not including cost or value of capital assets or investments sold during taxable year—see Item 19) (from Schedule A12)	1	548	628	25				
12	Depreciation of fixtures (including machine, commissions, and other compensation in whatever form paid) (from Schedule A13)		30	780	00				
13	Repairs (including labor, supplies, overhead, and other items properly chargeable to repairs) (from Schedule A14)		71	534	78				
14	Interest (except on liabilities incurred or continued to purchase or carry obligations or amounts, other than obligations of the United States (interest after September 30, 1917, the interest on which is wholly exempt from income tax))		28	563	30				
15	Net income Federal income, war profits, and excess profits taxes, taxes which are a credit under Section 221, and taxes assessed against local benefits of a kind tending to increase the value of the property owned		22	828	13				
16	Taxes assessed to be written and charged off with respect to taxable year		21	698	73				
17	Education, war and loss (including displacement) (from Schedule A15)		246	730	50				
18	Amortization of war facilities (from Schedule A16)								
19	Special deduction is claimed, Form A (Form 4) of Minor and Minute Deductions should be obtained from the Collector, New York, and filed								
20	Total of Items 11 to 20						1	979	861 74
21	Excess Net Income from 11 and 21							770	646 76
22	Profit or loss on sales of capital assets and investments (from Schedule A18)								
23	Profit or loss on sales of capital assets and investments (from Schedule A19)								
24	Profit or loss on sales of capital assets and investments (from Schedule A20)								
25	Profit or loss on sales of capital assets and investments (from Schedule A21)								
26	Profit or loss on sales of capital assets and investments (from Schedule A22)								
27	Profit or loss on sales of capital assets and investments (from Schedule A23)								
28	Profit or loss on sales of capital assets and investments (from Schedule A24)								
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151	Profit or loss on sales of capital assets and investments (from Schedule A147)								
152	Profit or loss on sales of capital assets and investments (from Schedule A148)								
153	Profit or loss on sales of capital assets and investments (from Schedule A149)								
154	Profit or loss on sales of capital assets and investments (from Schedule A150)								
155	Profit or loss on sales of capital assets and investments (from Schedule A151)								
156	Profit or loss on sales of capital assets and investments (from Schedule A152)								
157	Profit or loss on sales of capital assets and investments (from Schedule A153)								
158	Profit or loss on sales of capital assets and investments (from Schedule A154)								
159	Profit or loss on sales of capital assets and investments (from Schedule A155)								
160	Profit or loss on sales of capital assets and investments (from Schedule A156)								
161	Profit or loss on sales of capital assets and investments (from Schedule A157)								
162	Profit or loss on sales of capital assets and investments (from Schedule A158)								
163	Profit or loss on sales of capital assets and investments (from Schedule A159)								
164	Profit or loss on sales of capital assets and investments (from Schedule A160)								
165	Profit or loss on sales of capital assets and investments (from Schedule A161)								
166	Profit or loss on sales of capital assets and investments (from Schedule A162)								
167	Profit or loss on sales of capital assets and investments (from Schedule A163)								
168	Profit or loss on sales of capital assets and investments (from Schedule A164)								
169	Profit or loss on sales of capital assets and investments (from Schedule A165)								
170	Profit or loss on sales of capital assets and investments (from Schedule A166)								
171	Profit or loss on sales of capital assets and investments (from Schedule A167)								
172	Profit or loss on sales of capital assets and investments (from Schedule A168)								
173	Profit or loss on sales of capital assets and investments (from Schedule A169)								
174	Profit or loss on sales of capital assets and investments (from Schedule A170)								
175	Profit or loss on sales of capital assets and investments (from Schedule A171)								
176	Profit or loss on sales of capital assets and investments (from Schedule A172)								
177	Profit or loss on sales of capital assets and investments (from Schedule A173)								
178	Profit or loss on sales of capital assets and investments (from Schedule A174)								
179	Profit or loss on sales of capital assets and investments (from Schedule A175)								
180	Profit or loss on sales of capital assets and investments (from Schedule A176)								
181	Profit or loss on sales of capital assets and investments (from Schedule A177)								
182	Profit or loss on sales of capital assets and investments (from Schedule A178)								
183	Profit or loss on sales of capital assets and investments (from Schedule A179)								
184	Profit or loss on sales of capital assets and investments (from Schedule A180)								
185	Profit or loss on sales of capital assets and investments (from Schedule A181)								
186									

SCHEDULE B—RECONCILIATION OF NET PROFIT PER BOOKS WITH TAXABLE NET INCOME.

[illegible]

SCHEDULE C—BALANCE SHEETS.

Attach herein balance sheets as of the beginning and end of the taxable year (preferably in parallel columns), showing as nearly as practicable the details called for below:

[illegible]

A corporation having a net income of \$1,000 or more, which was in existence during at least one full power year, should also attach to this return similar balance sheets (preferably in printed format) as of the beginning of its first full power year and as of December 31, 1913.

SCHEDULE D—ANALYSIS OF SURPLUS ACCOUNT

SCHEDULE D—ANALYSIS OF SURPLUS ACCOUNT.
 Attach hereto an analysis of the corporation's surplus account, showing the details of all adjustments of surplus for the taxable year, as nearly as practicable in the following form.

2. *Surplus at beginning of year per books*
Add: 1. *Total net profit per books and per Schedule B (Item V).*
3. *Other credits to surplus (to be detailed).*

A corporation having a net income of \$1,000 or more, which was in existence during at least one full previous year, should also attach to this return a similar analysis of its surplus account for the first full previous year and for each subsequent year down to the beginning of the taxable year.

Page 8—Invested Capital Schedule—Continued
SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS (Continued).

DEBIT	CREDIT	DEBIT	CREDIT	TAXABLE YEAR
1. Valuation of patents, copyrights, secret processes, or formulas, good will, and similar, credit balance, debit, or other intangible property.				
2. Valuation of tangible property paid in for stock.				
3. Stock returned to the corporation as a gift, etc.				
4. Valuation of assets acquired in reorganizations.				
5. Appreciation.				
6. Depreciation and depletion.				
7.				
8.				
9. TOTAL DEDUCTIONS.				

SCHEDULE H—CHANGES IN INVESTED CAPITAL DURING TAXABLE YEAR.

1. Changes in invested capital during the taxable year ordinarily arise in one or more of the following ways:	2. If stock is issued for cash, the actual cash received (but not the amount of discounts) should be entered in this column. Assets (other than cash) paid in for stock must be valued in accordance with Section 261 (a) (2) of the Revenue Act of 1921.
(a) Additions by reason of the sale of capital stock or the issue of capital stock for tangible or other assets.	3. The amount of Federal income and excess profits taxes payable should be entered as of the date when due and payable whether reserves have been set up on the books or not. (See Article VI.)
(b) Liquidation of part of the capital by retirement of stock or purchase of treasury stock out of current earnings.	4. If capital stock of the corporation is reacquired but not paid for out of current profits, the cost of such stock should be deducted from invested capital.
(c) Payment of such dividends out of earnings of prior years.	5. The date called for in subsection 1 to 3 should be given for all transactions, except that columns 3 and 4 are applicable only to the date of reacquisition of the corporation's stock.
(d) Payment of amounts by stockholders, or creation of paid-in surplus by contribution of stockholders.	6. In Column 5 enter the number of days remaining in the taxable year (including the date of change).
(e) Property (by value and not for distribution, or otherwise) whether such item represents an addition or a deduction.	7. The net change, if not in accordance with the increases or decreases indicated in the balance sheet, should be fully reconciled therewith.
3. Report dividends paid out of profits of prior years but not dividends paid out of profits of the taxable year. Any distribution made during the first 60 days of the taxable year shall be deemed to have been made from earnings or profits accumulated during preceding taxable years; but any distribution made during the remainder of the taxable year shall be deemed to have been made from the remainder of the taxable year.	

1. DIVIDENDS OR ADDITIONS AND DEDUCTIONS.	2. DATE.	3. NUMBER OF SHARES OF STOCK ISSUED OR REACQUIRED.	4. AMOUNT OF CASH OR CASH VALUE ACTUALLY RECEIVED OR PAID OUT.	5. NUMBER OF DAYS REMAINING IN YEAR.	6. ADJUSTED AMOUNT. (Column 3 x Column 5.)
1. Dividends	2/1/10	1	50.000.00	334	16,650.00
2. Income tax	6/15/10	1	25.556.82	200	5,111.38
3.			75.556.82		25,761.38
4.					
5.					
6.					
7.					
8.					
9.					

SCHEDULE J—CHANGES IN INVESTED CAPITAL DURING PREWAR YEARS.

(Compute the net addition or reduction separately for each year. See instructions on Schedule E.)

1. DIVIDENDS OR ADDITIONS AND DEDUCTIONS.	2. DATE.	3. NUMBER OF SHARES OF STOCK ISSUED OR REACQUIRED.	4. AMOUNT OF CASH OR CASH VALUE ACTUALLY RECEIVED OR PAID OUT.	5. NUMBER OF DAYS REMAINING IN YEAR.	6. ADJUSTED AMOUNT. (Column 3 x Column 5.)
1. Dividends	2/1/11	1	75.000.00	31	2,325.00
2. Income tax	6/30/11	1	4.575.48	184	841.89
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

SCHEDULE K—CHANGES IN INVESTED CAPITAL FROM END OF PREWAR PERIOD TO BEGINNING OF TAXABLE YEAR, NOT SHOWN IN SCHEDULE J.
 (See instructions under Schedule K, as far as applicable.)

1. DIVIDENDS OR ADDITIONS AND DEDUCTIONS.	2. DATE.	3. NUMBER OF SHARES OF STOCK ISSUED OR REACQUIRED.	4. AMOUNT OF CASH OR CASH VALUE ACTUALLY RECEIVED OR PAID OUT.	5. NUMBER OF DAYS REMAINING IN YEAR.	6. ADJUSTED AMOUNT. (Column 3 x Column 5.)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

Page 3—Income Schedules—Continued
SCHEDULES SUPPORTING SCHEDULE A

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make attachments on paper of uniform size so far as practicable. In the space provided for the purpose on page 6 list all schedules attached to this return, giving the title and schedule number of each.

SCHEDULE A: COST OF GOODS SOLD, EXCLUSIVE OF EXPENSES, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In support of Item 3, Schedule A, corporations engaged in manufacturing or trading operations should submit an analysis, in reasonable detail, of the cost of goods sold. This statement should ordinarily include the following items but should not include any expense items called for separately in Schedule A.

1. Inventories at beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages actually charged to manufacturing cost on the corporation's books, showing the principal items separately.
4. Other expenses actually charged to manufacturing cost on the corporation's books. (State separately large or unusual items.)

Total.

- Notes:**
1. Inventories at close of period (to be reconciled with balance sheet).
 2. Cost of goods sold (Item 6, line 6).

Notes—Inventories should be valued at (a) cost or (b) cost or market, whichever is lower, provided, however, that whichever basis was adopted by a taxpayer for the taxable year 1917 must be continued unless upon application to the Commissioner permission is granted to change. If basis (b) is used it must be applied to each item in its inventory and not to a part only. Inventories should be recorded in a ledger manual, properly dated and maintained, and should be preserved as a part of the accounting books of the taxpayer. (See Articles 1381 to 1386 of Regulations No. 43.)

Then list which of the above-mentioned bases for valuing inventories is used in this return.

SCHEDULE A: GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 3, Schedule A.

Life insurance companies should enter as Item 3, Schedule A, the total premiums received from policyholders on each policy closed or law been paid back or credited to, or treated as an investment of premiums of, each policyholder within the taxable year. (See Article 146 and 147 of Regulations No. 43.)

Mutual marine insurance companies should enter as Item 3, Schedule A, the gross premiums collected and received by them from amounts paid for reinsurance.

SCHEDULE A: INTEREST ON OBLIGATIONS OF UNITED STATES OR ITS POSSESSIONS NOT EXEMPT.

Enter in table below the maximum amount of Liberty Bonds and other obligations of the United States issued since September 24, 1917 (per value) held at any one time, from the first issue was derived during the taxable year.

1. CLASS OF OBLIGATION.	2. MATURITY DATE OR DATE OF INTEREST PAYMENT.	3. MAXIMUM AMOUNT HELD AT ANY ONE TIME DURING THE TAXABLE YEAR.
1. First Liberty Loan issued since September 24, 1917.		\$100,000.00
2. Second Liberty Loan issued since September 24, 1917.		\$100,000.00
3. Third Liberty Loan issued since September 24, 1917.		\$100,000.00
4. War Obligations issued since September 24, 1917.		\$100,000.00

Notes—This exemption as to income is and is (maximum \$40,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed by and still held. Bonds that matured here 1917.

In order to ascertain the amount to be entered as Item 4, Schedule A, refer first to the table above.

If the amounts entered in column 3 of the table for any class of obligations exceeds the maximum exemption for the same class of obligations plus any part of the \$40,000 exemption applied to that class (see column 2, above), attach a schedule showing in reasonable detail the following information:

- (a) Class of obligation.
- (b) First and last dates of each period during which the corporation's holdings of that class of obligations remained unchanged.
- (c) Amount of obligations of that class held by the corporation during each such period.
- (d) Amount by which each amount entered in column (c) exceeds the maximum exemption for that class of obligations.
- (e) Date of interest.
- (f) Interest received from each amount of principal stated in column (d).

For the purpose of showing changes in holdings and applying the exemption, column 2 and 3 must be taken jointly, but for the purpose of computing the taxable interest they must be entered separately.

None as Item 4, Schedule A, the total of column (f) for all classes of obligations.

Submit also a statement showing the amount of interest derived from bonds and other obligations of the United States and its possessions, exclusive of those described in the table above.

SCHEDULE A: INTEREST FROM OTHER SOURCES.

Submit a schedule showing the nature, source, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 5, Schedule A.

For interest on foreign bonds submit a schedule showing (a) name of country, (b) kind of obligation (whether national, state, municipal, or corporate obligation); (c) amount of principal; and (d) amount of interest.

SCHEDULE A: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (a) name of corporation; (b) country in which organized; (c) total per value of stock held; and (d) amount of dividends.

SCHEDULE A: GROSS INCOME FROM ALL OTHER SOURCES EXCEPT DIVIDENDS (not including any amount in respect of capital assets or miscellaneous investments).

Submit a schedule showing the nature, source, and amount of the principal items included herein, the minor items being grouped in one figure. The total of the schedule should be entered as Item 10, Schedule A.

SCHEDULE A: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedules A and not including cost or value of capital assets or miscellaneous investments held during taxable year).

Submit a statement showing character and amount of the principal items included in Item 11, Schedule A.

Insurance companies should state separately in Schedule A12 (a) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds; and (b) the total of sums other than dividends paid within the year on policy and annuity contracts.

Corporations issuing policies covering life, health, and accident (insurance companies) in one policy issued on the weekly premium payment plan continuing for life and not subject to cancellation should report in Schedule A12 each part of the net addition (not required by law) made within the taxable year to reserve funds as is required for the protection of the holders of such policies.

Mutual marine insurance companies should report in Schedule A12 amounts paid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the termination and the payment thereof.

Mutual insurance companies (other than mutual life and mutual marine insurance companies) that require their members to make premium deposits to provide for loans and expenses should report in Schedule A12 the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of loans, expenses, and maintenance reserves (unless deferred payments in Schedule A).

SCHEDULE A13: COMPENSATION OF OFFICERS.

Submit a schedule showing for each officer (1) name, (2) duties, (3) time devoted to such duties, (4) share of stock owned, (5) total annual compensation for the years 1918, 1917, and 1916, and (6) reasons for increase.

SCHEDULE A14: REPAIRS (including building, supplies, overhead, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvements or betterments which increase the value of the property are chargeable to capital account. Expenditures for repairing or replacing property are not deductible under this or any other item of return. Such expenditures are chargeable to capital account or to depreciation account, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A15: DEPRECIATION, WEAR AND TEAR (including obsolescence).

Submit a columnar schedule containing, in the most practicable form, essentially the following information:

1. A classification of depreciable assets subdivided on the basis of (a) character, (b) term of useful life.
2. The fair market value of each asset March 1, 1913, if acquired before that date.
3. The cost of each asset if acquired after February 28, 1913.
4. The estimated life or term of reasonable usefulness of each asset from date acquired or from March 1, 1913, as the case requires. Give reasons for your conclusion.

5. For each class of assets state—

- (a) The total amount of depreciation from March 1, 1913, to the beginning of the taxable year.
- (b) The total amount of depreciation (depreciation, wear and tear, including obsolescence) claimed for the taxable year.

6. A reconciliation of all figures shown in this schedule with corresponding figures reflected in the balance sheet.

SCHEDULE A16: AMORTIZATION OF WAR FACILITIES.

If amortization of war facilities is claimed the taxpayer is required to submit with this return the information and schedule called for in Article 181 to 187 of Regulations 43.

SCHEDULES A17 AND A18: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS AND MISCELLANEOUS INVESTMENTS, AND INCOME ACCRUED DURING THE TAXABLE YEAR FROM FIRE, STORM, OR OTHER CASUALTY, OR FROM THEFT, NOT COMPENSATED FOR BY INSURANCE OR OTHERWISE.

Submit a columnar schedule setting forth for each sale of capital assets or of miscellaneous investments and for each loss during the taxable year the information called for below:

1. Description of property sold or of property in respect of which a loss is claimed.
2. Date acquired.
3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.
4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.
5. Total of Items 3 and 4.
6. Depreciation or depletion of property subject thereto—

- (a) For books.
- (b) Accrued but not on books.

7. Salvage value, if any, of property on which a loss is claimed.

8. Amount of insurance or other recovery on property, if any.

9. Proceeds of sale or cash value of property received in exchange (for transactions falling in Item 15, Schedule A) (see Note).

10. Total of Items 5 to 9, inclusive.

11. Profit or loss.

12. Cause of loss (for losses falling in Item 15, Schedule A).

Notes—Submit evidence substantiating the basis used by you in arriving at the cash value of property received in exchange for other property.

COMPENSATION AT RATE OF \$3,000 OR MORE PER ANNUM.

Submit a schedule showing for each employee (if a stockholder of the corporation), whose compensation is at the rate of \$3,000 or more per annum, facts similar to those called for in Schedule A13.

WORKING PAPERS.

Every corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the corporation's books that was used in preparing Schedule A.
2. The amount deducted from each such balance on account of each class of non-taxable income, uncollectible deductions, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B in which each amount as deducted was included.
3. The remainder of each such balance, analyzed to show the amount included in each item of Schedule A, with a reference to the number of the item in Schedule A in which each such amount was included.

Balance Sheet
December 31, 1917

Assets		Liabilities	
Cash	\$ 189,923.18	Capital Stock	\$ 5,000,000.00
Land	247,003.00	Notes Payable	990,000.00
Buildings	703,711.99	Accounts Payable	264,398.07
Machinery & Equipment	1,072,237.35	Mortgage	6,000.00
Patents	35,000.00	Reserves for dep.	232,959.24
Good Will	109,120.00	Undivided Profits	<u>984,620.79</u>
Investments	221,000.00		\$ 7,477,978.10
Liberty Bonds	101,447.33		
Prepaid Items	236,067.50	Invested Capital	5,984,620.79
Notes Receivable	236,096.65	Surplus	<u>984,620.79</u>
Accounts Receivable	1,260,010.25		
Inventory	<u>3,067,330.63</u>		
	\$ 7,477,978.10		

Balance Sheet
December 31, 1918

Assets		Liabilities	
Cash	\$ 307,750.42	Capital Stock	\$ 5,000,000.00
Land	251,990.59	Notes Payable	760,000.00
Buildings	834,897.34	Accounts Payable	225,302.62
Machinery & Equipment	1,237,671.20	Reserves for dep.	371,021.87
Patents	45,000.00	Undivided Profits	<u>1,386,293.95</u>
Good Will	109,120.00		\$ 7,744,618.44
Investments	201,000.00		
Liberty Bonds	216,560.25	Invested Capital	\$ 6,388,293.95
Canadian Bonds	400.00	Surplus	<u>1,386,293.95</u>
Prepaid Items	21,941.30		
Precious Metals	46,521.18		
Notes Receivable	205,385.79		
Accounts Receivable	1,152,881.13		
Inventory	<u>3,113,738.14</u>		
	\$ 7,744,618.44		

Analysis of Surplus Account.

Surplus December 31, 1917		\$ 984,620.79
Net Income		639,886.52
Exempt Interest		<u>1,353.87</u>
		\$1,625,861.18
Less Dividends	\$ 200,000.00	
" Income Tax	25,556.82	
" Donations	<u>12,010.41</u>	
		<u>237,567.23</u>
	Surplus December 31, 1918	\$1,388,293.95

1-5-a

Schedule A-2

Inventories at beginning of period		3,067,330.68
Purchases during period		3,794,710.60
Supervision	143,164.11	
Clerical	103,317.83	
Miscellaneous	203,637.98	
Direct Labor	<u>798,106.23</u>	1,246,226.13
Heat, Light, Power	57,181.69	
Factory Supplies	83,772.63	
Freight, express & cartage	22,384.04	
Miscellaneous expenses	<u>134,622.93</u>	<u>227,661.29</u>
Total		8,406,127.70
Debit inventories at close of period		<u>3,113,799.14</u>
Cost of goods sold		5,292,328.56

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Schedule A-3

Sales of platinum	\$ 133,820.84
Factory Scrap Sales	7,787.74
Miscellaneous Income	<u>12,686.16</u>
	\$ 154,294.73

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Schedule A-5

Interest from other sources.

Notes receivable and bank deposits	\$ 11,416.06
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Schedule A-12

Ordinary and Necessary Expenses.

Salaries	\$ 705,171.10
Traveler's expenses	111,858.52
Advertising expenses	223,562.86
Experimental expenses	144,682.96
Freight, express & cartage	55,318.87
Insurance	15,148.19
Rents	72,201.54
Supplies	30,356.27
Miscellaneous	71,757.23
Moving expenses	<u>28,643.71</u>
	\$ 1,458,698.25

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2-5-a

Schedule A-4 Part 1.

1st Liberty Loan converted into 2nd Loan & 2nd Liberty Loan unconverted
 1st & 2nd Liberty Loan converted into 3rd Loan and 3rd Liberty Loan
 4th Liberty Loan

4,550.00
 106,450.00
 106,200.00

A	B	C	D	E	F
	Period during which corporation's holdings of obligations designated in column (a) unchanged. First date of period Last date of period	Am't. of class, column (a) held during period shown by column (b)	Am't. by which each am't. enter in col. c. exceeds the exempt. for that class of obligation	Rate of interest	Int. deriv. from each am't. of principal stated in col. (d)
1st. Conv. 2nd	1/1/18	100.00	100.00	4%	4.00
1st. " 3rd	5/9/18	1,000.00	1,000.00	4%	27.48
2nd 4's	1/1/18	107,350.00	57,350.00	4	810.76
2nd 4's	5/9/18	4,450.00	4,450.00	4	115.09
2nd. Conv. 3rd	12/31/18	102,900.00	52,900.00	4%	1,453.66
3rd 4's	5/9/18	2,550.00	2,550.00	4%	70.07
4th 4's	10/24/18	104,200.00	74,200.00	4%	587.50

Schedule A-4 Part. 11.

Interest on first 3^d Liberty Loan

\$ 64.87

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Schedule A-13

Compensation of Officers.

Name	Duties Devoted	Time	Shares of Stock owned	Annual Compensation		
				1916	1917	1918
Frank H. Taylor, Pres.	Entire		125	16,000.	16,000.	16,000. #
Edwin T. Hinkson, Treas.	"		115	8,000.	8,000.	8,000.
R. L. Valli,	"		42	4,000.	4,333.33	4,750. "

as agreed at time of employment.
" a normal one.

Schedule A-14

Repairs.

Repairs to buildings and factory equipment			
12th Street Factory		\$	2,002.27
Frankford "			4,053.86
Staten Island "			48,583.27
C&M Division "			8,647.84
Porcelain Tooth Factory			1,080.51
Head Office 211 S. 12th St.			8,536.92
Philadelphia Retail Store			284.10
Atlanta "			65.11
Chicago "			246.17
New York "			393.63
San Francisco "			87.59
Boston "			354.72
Less excess credit to reserve for repairs			72,266.01
Total			751.82
			71,554.79

Schedule A-16

Depreciation.

Kind of property	Cost	Duration	Taken this yr.	Previously taken.
Buildings	634,597.34	50 yrs.	16,791.76	59,530.92
Machinery, etc.	1,237,671.20	10 "	123,767.12	173,428.32
	2,072,268.54		140,558.88	
Obsolescence			106,181.72	
			246,740.60	232,959.24

Explanation of obsolescence as taken:

Machinery as capitalized in 1916	\$	22,696.00
" " " " 1917	\$	34,343.67
Advertising, catalogue book	\$	57,039.67
Charts, posters & expenses capitalized in 1916 & 1917 for the tooth business		49,142.05
		106,181.72

The utter failure of the project for the tooth business resulted in 1918 of a total loss to the company of the entire capitalization of the tooth business entailing a total loss to the company during 1918 of \$106,181.72.

4-5-a

Schedule A-23-24

1. Description of property sold or of property in respect of which a loss is claimed: Investment in branch house located in Berlin, Germany, incorporated as the S. S. White Dental Mfg. Co. m.b.H. stock fixtures and furniture.
 2. Date acquired: 1896.
 3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after Feb'y. 23, 1913: \$228,303.60.
 5. Total from column (3) \$228,303.60.
 7. Salvage value, if any of property on which a loss is claimed: 97,539.46.
 10. Total of Item 7, inclusive: 97,539.46.
 11. Loss difference between columns 5 and 10: 130,764.34.
 12. Cause of loss: entire investment confiscated by German Imperial government resulting in a total loss to this company.
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5-5-9

Page 8—Income Schedules—Continued
SCHEDULES SUPPORTING SCHEDULE A

The schedules called for below should be prepared and firmly stapled to this return. Designate each schedule with the number of the item in Schedule A which it explains. Make schedules on paper of uniform size so far as practicable. In the space provided for the purpose on page 1 in all schedules attached to this return, giving the title and schedule number of each.

SCHEDULE A8: COST OF GOODS SOLD, EXCLUSIVE OF REPAIRS, REPAIRS, AND OTHER ITEMS CALLED FOR SEPARATELY.

In respect of Item 8, Schedule A, expenses reported in manufacturing or buying questions should submit an analysis, in reasonable detail, of the cost of goods sold. The statement should include the following items but need not include any expense items called for separately in Schedule A.

1. Invention or beginning of period (to be reconciled with balance sheet).
2. Purchases during period.
3. Labor and wages actually charged to manufacturing cost on the corporation's books, showing the principal items separately.
4. Other expenses actually charged to manufacturing cost on the corporation's books. (State separately large or unusual items.)
5. Total.

Notes:

1. Invention at close of period (to be reconciled with balance sheet).
2. Cost of goods sold (Item 8, line 10).

Notes.—Inventories should be valued at (a) cost or (b) cost or market, whichever is lower, provided, however, that whenever basis was adopted by a taxpayer for the taxable year 1917 must be continued unless upon application to the Commissioner permission is granted to change. If basis (b) is used it must be applied to each item in the inventory and not to a part only. Inventories should be recorded in a logical manner, properly segregated and summarized, and should be preserved as a part of the accounting records of the taxpayer. (See Article 1981 in 1918 of Regulations No. 48.)

State how each of the above mentioned items for valuing inventories is used in this return.

SCHEDULE A9: GROSS INCOME FROM OPERATIONS OTHER THAN TRADING OR MANUFACTURING, LESS ALLOWANCES.

Submit a schedule showing the nature and amount of the principal items included in Item 9, Schedule A.

Life insurance companies should enter on Item 9, Schedule A, the total premiums received from policyholders less such portion thereof as has been paid back or credited to, or treated as an statement of premiums of, such policyholders within the taxable year. (See Article 198 and 197 of Regulations No. 48.)

Mutual marine insurance companies should report on Item 9, Schedule A, the gross premiums collected and received by them less amounts paid for reinsurance.

SCHEDULE A6: INTEREST ON OBLIGATIONS OF UNITED STATES OR ITS POSSESSIONS NOT EXEMPT.

Enter in table below the maximum amount of Liberty Bonds and other obligations of the United States issued since September 24, 1917 (per value) held at any one time, from which interest was derived during the taxable year.

1. Name of Obligation	2. Maximum Amount of Obligation	3. Maximum Redemption
1st Liberty Loan converted into United States Bonds (see Article 197 of Regulations No. 48)		
2nd Liberty Loan converted into United States Bonds (see Article 197 of Regulations No. 48)		
3rd Liberty Loan converted into United States Bonds (see Article 197 of Regulations No. 48)		
4th Liberty Loan		
5th Liberty Loan		
6th Liberty Loan		
7th Liberty Loan		
8th Liberty Loan		
9th Liberty Loan		
10th Liberty Loan		
11th Liberty Loan		
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92nd Liberty Loan		
93rd Liberty Loan		
94th Liberty Loan		
95th Liberty Loan		
96th Liberty Loan		
97th Liberty Loan		
98th Liberty Loan		
99th Liberty Loan		
100th Liberty Loan		

Notes.—This exemption as to loans in 15 (maximum \$10,000) is limited to one and one-half times the amount of bonds of the Fourth Liberty Loan originally subscribed for and sold before June 1, 1918. State that amount here, in 104-2024-00.

In order to ascertain the amount to be entered on Item 6, Schedule A, refer first to the table above.

If the amount entered in column 3 of the table for any class of obligations exceeds the maximum exemption for the total class of obligations less any part of the 10,000 exemption assigned to that class (see column 2), which warrants a schedule showing in separate columns the following information:

- (a) Class of obligation.
- (b) First and last date of each period during which the corporation's holdings of that class of obligation remained unchanged.
- (c) Amount of obligations of that class held by the corporation during each such period.
- (d) Amount by which such amount entered in column (c) exceeds the maximum exemption for that class of obligation.
- (e) Rate of interest.
- (f) Interest derived from each amount of principal stated in column (d).

For the purpose of showing changes in holdings and applying the exemption, classes in and 15 must be taken jointly, but for the purpose of computing the taxable interest they must be entered separately.

Enter on Item 6, Schedule A, the total of columns (f) for all classes of obligations. Submit also a statement showing the amount of interest derived from bonds and other obligations of the United States and its possessions, exclusive of those described in the table above.

SCHEDULE A6: INTEREST FROM OTHER SOURCES.

Submit a schedule showing the source, nature, and amount of the principal items included herein, the other items being grouped in one figure. The total of the schedule should be entered on Item 6, Schedule A.

For interest on foreign bonds submit a schedule showing (a) name of country; (b) kind of obligation; (c) amount of interest; (d) amount of principal; and (e) amount of interest.

SCHEDULE A6: DIVIDENDS ON STOCK OF FOREIGN CORPORATIONS.

Submit a schedule showing (a) name of corporation; (b) country in which organized; (c) total per value of each held; and (d) amount of dividends.

SCHEDULE A6: GROSS INCOME FROM ALL OTHER SOURCES EXCEPT DIVIDENDS (not including any amount in respect of capital assets or nonexempt investments).

Submit a schedule showing the source, nature, and amount of the principal items included herein, the other items being grouped in one figure. The total of the schedule should be entered on Item 10, Schedule A.

SCHEDULE A6: ORDINARY AND NECESSARY EXPENSES (except amounts called for separately in Schedules A and not including cost or value of capital assets or nonexempt investments sold during taxable year).

Submit a statement showing character and amount of the principal items included in Item 12, Schedule A.

Insurance companies should state separately in Schedule A12 (a) the net claims required by law to be made within the taxable year to reserve funds (including in the case of mutual insurance companies the actual deposit of same with State or United States or payment to law as addition to guarantee or reserve funds, and (b) the total of more than one dividend paid within the year on policy and monthly contracts.

Corporations issuing policies covering life, health, and accident (insurance combined in one policy issued on the readily payment plan continuing for life and not subject to cancellation should report in Schedule A12 each part of this net addition (not required by law) made within the taxable year to reserve funds as is required for the protection of the holders of such policies.

Mutual marine insurance companies should report in Schedule A12 amounts paid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the accumulation and the payment thereof.

Mutual insurance companies (other than mutual life and accident policies insurance companies) that require their members to make premium deposits to provide for loans and expenses should report in Schedule A12 the amount of premiums deposited returned to their policyholders and the amount of premium deposits retained for the payment of loans, expenses, and insurance reserves (unless deducted elsewhere in Schedule A).

SCHEDULE A13: COMPENSATION OF OFFICERS.

Submit a schedule showing for each officer (1) name, (2) duties, (3) time devoted to each duty, (4) salary or fixed reward, (5) total annual compensation for the year 1918, 1917, and 1916, and (6) reasons for increase.

SCHEDULE A14: REPAIRS (including labor, supplies, material, and other items properly chargeable to repairs).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvement or betterment which increase the value of the property are chargeable to capital account. Expenditures for repairs or replacing property are not deductible under this or any other item of the return. Expenditures are chargeable to repair account or to depreciation reserve, depending on the treatment of depreciation on the books of the taxpayer.

SCHEDULE A14: EXHAUSTION, WEAR AND TEAR (including obsolescence).

Submit a schedule showing the nature and amount of the principal items included in Item 14, Schedule A.

Incidental repairs, which do not add to the value or appreciably prolong the life of property, are deductible as expenses. Expenditures for new buildings or for permanent improvement or betterment which increase the value of the property are chargeable to capital account. Expenditures for repairs or replacing property are not deductible under this or any other item of the return. Expenditures are chargeable to repair account or to depreciation reserve, depending on the treatment of depreciation on the books of the taxpayer.

1. A classification of depreciable assets subdivided on the basis of (a) character, (b) term of useful life.

2. The fair market value of each asset March 1, 1913, if acquired before that date.

3. The cost of each asset if acquired after February 28, 1913.

4. The estimated life or term of reasonable usefulness of each asset from date acquired or from March 1, 1913, as the case requires. Give reasons for your classification.

5. For each class of assets state—

(a) The total amount of depreciation from March 1, 1913, to the beginning of the taxable year.

(b) The total amount of depreciation (reduction, wear and tear, including obsolescence) claimed for the taxable year.

6. A reconciliation of all figures shown in this schedule with corresponding figures reflected in the balance sheet.

SCHEDULE A15: AMORTIZATION OF WAR FACILITIES.

If amortization of war facilities is claimed the taxpayer is required to submit with this return the information and schedule called for in Article 191 to 197 of Regulations No. 48.

SCHEDULES A22 AND A24: PROFIT OR LOSS ON SALES OF CAPITAL ASSETS

Submit a schedule showing the nature and amount of the principal items included in Item 22, Schedule A, and Item 24, Schedule A, and the reasons for increase.

Submit a schedule showing the nature and amount of the principal items included in Item 22, Schedule A, and Item 24, Schedule A, and the reasons for increase.

1. Description of property sold or of property in respect of which a loss is claimed.

2. Date acquired.

3. Fair market price or value on March 1, 1913, if acquired before that date, or cost if acquired after February 28, 1913.

4. Cost of improvements, if any, since February 28, 1913, or since date of acquisition, if acquired after February 28, 1913.

5. Total of Items 1 and 4.

6. Depreciation or depletion of property subject thereto—

(a) Per books.

(b) Amount lost net on books.

7. Salvage value, if any, of property on which a loss is claimed.

8. Amount of insurance or other recovery on property, if any.

9. Proceeds of sale or cost value of property received in exchange (for Schedule A22 and A24, see Item 22, Schedule A) (see Item 24, Schedule A).

10. Total of Items 1 to 9, inclusive.

11. Profit or loss.

12. Name of loss (for items filed in Item 24, Schedule A).

Notes.—Submit evidence substantiating the basis and by you in writing on the net value of property received in exchange for other property.

COMPENSATION AT RATE OF \$2,000 OR MORE PER ANNUM.

Submit a schedule showing for each employee (1) a stockholder of the corporation, whose compensation is at the rate of \$2,000 or more per annum, how similar to that called for in Schedule A13.

WORKING PAPERS.

Every corporation should preserve, available for inspection by a revenue officer, working papers showing—

1. The balance in each account on the corporation's books that was used in preparing Schedule A.

2. The amount deducted from each such balance on account of each class of nonexempt income, unallowable deduction, and other adjustments indicated in Schedule B, with a reference to the number of the item in Schedule B to which such amount is deductible or a loss.

3. The remainder of each such balance, analyzed to show the amount included in each item of Schedule A, with a reference to the number of the item in Schedule A to which such amount was included.

Page 4—Invested Capital Schedules

SCHEDULE E—CAPITAL, SURPLUS, AND UNDEVELOPED PROFITS AS SHOWN BY BOOKS BEFORE ANY ADJUSTMENTS ARE MADE THEREON.

Be. Study carefully extending to the end of the preceding taxable year should be stated in this schedule to the extent that it is paid up. If stock at stated value is issued at a premium value or without par value, the entire amount shall be reflected in the books in respect thereof at the close of the preceding taxable year.

1. The book should include paid in surplus per book at the end of the preceding year. If any amount is claimed under Section 2001(a) of the Revenue Act of 1918 or under Article 200 of the Regulations thereunder, the amount claimed should be entered under Item 1, Schedule F, and set in this schedule.

27. Remove which represent fluctuations of surplus and were not accumulated through deductions made in computing net income as reported in previous years any (1) property acquired, be entered on Item 7. Such entries should be identified and if necessary reconciled with independent sources.

28. The cost (or book value) of different items of treasury stock held at the end of the preceding taxable year should be indicated on Item 9, if the par value of such stock is included in the amount entered on Item 4. Treasury stock included in the amount required by the corporation and not received, regardless of the reason for the acquisition.

Item	1911	1912	1913	1914	TOTAL YEAR
Capital stock paid up and actually outstanding at the close of the preceding year:					
1. Paid (preferred)					
2. Common	1,000,000.00	5,000,000.00	5,000,000.00	5,000,000.00	
3. Total	1,000,000.00	5,000,000.00	5,000,000.00	5,000,000.00	
Surplus and undivided profits:					
4. Paid-in surplus					
5. Earned surplus and undivided profits	6,566,463.56	724,379.98	742,119.77	984,620.79	
6. Reserve, additions to which are not distributable in computing net income (to be reconciled with balance sheet item)					
7. Other reserve or reserve of S. S. White	6,566,463.56	5,724,379.98	5,742,119.77	5,984,620.79	
8. Deduct cost of treasury stock (or book value) of different items (net), if any is included above as outstanding					
9. New total (Item 3 plus Item 5)	5,566,463.56	5,724,379.98	5,742,119.77	5,984,620.79	

SCHEDULE F—ADJUSTMENTS BY WAY OF ADDITIONS.

1. If, in addition to invested capital is claimed in Item 1, Schedule F, submit a statement showing (a) the kind of property, (b) the year in which it was paid in, (c) from where acquired, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

2. If, in addition to invested capital is claimed in Item 1, Schedule F, submit a statement showing (a) the kind of property, (b) the year in which it was acquired, (c) the source of the value of such property, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

when made, written off in time of depreciation? If so, explain what adjustments have been made to provide for depreciation. In view of the proposed restoration in surplus.

29. If any additions to invested capital is claimed in Item 1, Schedule F, state specifically the amount of depreciation on written off each year in the books of the company, and the amount allowed as a deduction computing net income.

30. If any assets of the trade or business in existence during both the taxable year and the preceding year are included in the invested capital for the taxable year but not for each preceding year, or are valued at a different basis in computing the invested capital for the taxable year and each preceding year, entries should be made in this schedule adjusting the invested capital for each preceding year affected so as to value such assets upon the same basis in the preceding period as in the taxable year.

Item	1911	1912	1913	1914	TOTAL YEAR
1. Add cost value of tangible property directly and indirectly to assets of the taxable year and of the book or other contribution paid in the year of acquisition					
2. Additions to surplus (Articles 2001 to 2004)					
3. Depreciation charged in the accounts of the corporation but not allowable as a deduction on income tax returns (to be reconciled with balance sheet item)					
4. Adjustment of valuation of assets in existence both during taxable year and in previous period (Article 2004)					
5.					
6.					
7.					
8. Total					

SCHEDULE G—ADJUSTMENTS BY WAY OF DEDUCTIONS.

1. If, in any period, copyright, secret process or formula, paid up, trade-mark, trade name, or other intangible property, paid in for stock, entered on the books of the corporation at a value in excess of the actual cash value when paid in?

2. If the amount to any of the foregoing questions is "yes," submit a statement showing (a) the nature of the property, (b) the year in which it was paid in, (c) from where acquired, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

3. If the intangibles were acquired before March 8, 1917, the amount by which (f) exceeds (g), or 50 per cent of (g), whichever is less, must be entered on Item 1, Schedule F, for the taxable year and for each year of the preceding period that is affected.

4. If the intangibles were acquired on or after March 8, 1917, the amount by which the way in (f) exceeds the book value of such property, or 50 per cent of (g), whichever is less, must be included in Item 1, Schedule F, for the taxable year. Provided, that if intangibles were acquired before March 8, 1917, and then on or after that date, deduction shall be made so that the amount included in the invested capital for the taxable year shall not exceed 50 per cent of the value of the intangible stock outstanding at the beginning of the taxable year.

5. If the stock of the corporation was issued at a nominal value or without par value for the purpose of the corporation under Item 1, the par value shall be deemed to be the book value of such stock at the date of issue. The appropriate value as determined by the books of the corporation, as of the date of issue, or at the beginning of the taxable year, shall be the book value of the corporation.

6. If any tangible property, paid in for stock, entered on the books of the corporation at a value in excess of the actual cash value when received?

7. If the answer to either of the foregoing questions is "yes," submit a statement showing (a) the nature of the property, (b) the year in which it was paid in, (c) from where acquired, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

8. If the tangible property was acquired before March 8, 1917, the amount by which (f) exceeds (g), or 50 per cent of (g), whichever is less, must be entered on Item 1, Schedule F, for the taxable year and for each year of the preceding period that is affected.

9. If the tangible property was acquired on or after March 8, 1917, the amount by which the way in (f) exceeds the book value of such property, or 50 per cent of (g), whichever is less, must be included in Item 1, Schedule F, for the taxable year. Provided, that if tangible property was acquired before March 8, 1917, and then on or after that date, deduction shall be made so that the amount included in the invested capital for the taxable year shall not exceed 50 per cent of the value of the tangible stock outstanding at the beginning of the taxable year.

10. If the answer to either of the foregoing questions is "yes," submit a statement showing (a) the nature of the property, (b) the year in which it was paid in, (c) from where acquired, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

11. If the tangible property was acquired before March 8, 1917, the amount by which (f) exceeds (g), or 50 per cent of (g), whichever is less, must be entered on Item 1, Schedule F, for the taxable year and for each year of the preceding period that is affected.

12. If the tangible property was acquired on or after March 8, 1917, the amount by which the way in (f) exceeds the book value of such property, or 50 per cent of (g), whichever is less, must be included in Item 1, Schedule F, for the taxable year. Provided, that if tangible property was acquired before March 8, 1917, and then on or after that date, deduction shall be made so that the amount included in the invested capital for the taxable year shall not exceed 50 per cent of the value of the tangible stock outstanding at the beginning of the taxable year.

The amount of (1) year (2) must be entered as Item 8, Schedule G, for the taxable year and for each year of the preceding period that is affected. However, no deduction is necessary if adequate adjustment has been made under Item 1 of this schedule.

31. Was the business acquired or consolidated or was its ownership changed or was there a change in ownership of property after March 9, 1917?

32. Did an interest of 50 per cent or more in the business or in the property which changed ownership remain in the control of the same persons, corporations, associations, or partnerships, or of any of them?

33. Were any of the assets entered on the books of the corporation making this return at a higher value than on the books of its predecessor?

34. If such previous owner was not a corporation, submit a statement showing (1) the nature of the property, (2) the year in which it was paid in, (3) from where acquired, (4) the date of acquisition, (5) the actual cash value of such property at the time when paid in, (6) the par value of such or shares issued therefor and (7) the book value of the property as determined and the date when such determination was made.

35. If all, or substantially all, of the property was acquired from a corporation during the taxable year which owns before March 8, 1917, the amount by which (f) exceeds (g), or 50 per cent of (g), whichever is less, must be entered on Item 1, Schedule F, for the taxable year and for each year of the preceding period that is affected.

36. The increase in book value of any property acquired by negotiation, contribution, or change of ownership, over the amount allowable to the predecessor corporation at the time of acquisition or at the time of the change, must be entered on Item 1, Schedule F, for the taxable year and for each year of the preceding period that is affected.

37. Is any property (including physical property, acquisition, and intangible property) paid in with cash or with other tangible property entered on the books of the corporation at a value in excess of the amount of cash paid therefor or the actual cash value of the tangible property paid therefor?

38. If the answer to either of the foregoing questions is "yes," submit a statement showing (a) the nature of the property, (b) the year in which it was paid in, (c) from where acquired, (d) the date of acquisition, (e) the actual cash value of such property at the time when paid in, (f) the par value of such or shares issued therefor and (g) the book value of the property as determined and the date when such determination was made.

39. Has adequate provision been made in the account accounts of the company for (a) losses of every kind? (b) depreciation? (c) obsolescence? (d) depletion of mineral deposits, timber supplies, and the like?

40. If adequate charge has not been made for depreciation, depletion, obsolescence, and other losses, and the value of the property has not been reduced by expenditures that have been charged to expense, proper additional charges thereby must be computed for all years in which such loss or loss has occurred, and the amount of such charges must be entered on Item 1, Schedule G, for the taxable year and for each year of the preceding period that is affected.

May 4, 1921.

Commissioner of Internal Revenue,
Washington, D. C.

In re: The S. S. White D. M. Co.,
Amended Returns 1916-1917-1918-1919.

Sir:

There is herewith submitted Amended Returns for The S. S. White Dental Manufacturing Company, 211 South 12th Street, Philadelphia, Pa., for the calendar years 1916, 1917, 1918 and 1919, showing a net overpayment of taxes in the four amended returns for the years above indicated as given in detail as follows:

1913 - 1914 - 1915

The depreciation charged in the taxable years of 1913-1914-1915 as set forth in the balance sheets attached to the 1916 amended return which were not deducted from the net income in fixing the tax liabilities of those years are claimed as credits now against the underpayment of taxes for 1916 and are as follows:

1913 Depreciation charged	\$ 9,819.30	tax ---	\$ 98.19
1914 " "	11,878.05	"	118.78
1915 " "	<u>11,858.05</u>	"	<u>118.58</u>
Total	\$ 33,555.40		\$ 335.55

- 1916 -

The original return showed a total net income of \$378,187.07; and a tax liability of \$7,563.44.

The amended return shows a net income of \$400,563.78 and a tax liability of \$8,011.28 being an underpayment of taxes of \$447.54 of which amount \$335.55 is credited to the overpayment of 1913 - \$98.19, 1914 - \$118.78 and 1915 - \$118.58 and the balance of the underpayment \$111.99 is credited to the overpayment of 1917.

The differences of net income are explained as follows:

Net income on Amended return	\$ 400,563.78
" " " Original "	<u>378,187.07</u>
	\$ 22,376.71

1-4-a

Gross income omitted from original return	\$ 1,993.60
Berlin, Germany reserve deduction	20,000.00
Bad Debts excess deduction	3,137.29
General expense item not deductible	<u>5,569.87</u>
	\$30,700.76

Less depreciation not taken	<u>\$ 324.05</u>	\$ 22,376.71
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The corrected balance sheet for December 31, 1916
as follows: -

Balance Sheet
Dec. 31, 1916

Assets:		Liabilities:	
Cash	\$ 327,163.16	Capital Stock	\$ 5,000,000.00
Land	247,003.00	Accounts Payable	139,438.45
Buildings	595,063.76	Reserves for Depre-	
Machinery & Equipment	618,379.41	ciation	111,658.20
Patents	35,000.00	Undivided Profits	<u>802,610.14</u>
Good Will	109,120.00		\$ 6,053,706.79
Investments	65,000.00		
Prepaid items	92,160.20	Invested Capital	5,802,610.14
Notes Receivable	409,527.27	Surplus	<u>802,610.14</u>
Accounts Receivable	1,109,947.01		
Inventory	<u>2,245,352.98</u>		
	\$ 6,053,706.79		

1917.

The original return showed a net income of \$414,702.57 with a tax liability of \$25,556.82.

The amended return shows a net income of \$394,051.70 with a tax liability of \$23,643.09.

The differences in net income are explained as follows:

Net income of original return	\$ 414,702.57
" " " amended "	<u>394,051.70</u>
Difference	\$ 20,650.87

Exempt interest included in original return	\$ 1,775.33
Additional bad debts omitted in original return	3,067.71
Additional depreciation omitted in original return	<u>15,807.83</u>

Total	\$ 20,650.87
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2-4-a

The original return showed a net invested capital on which the excess profits credits were predicated of \$5,830,198.71, giving a credit at 7% plus the exemption of \$3,000.00 of \$411,113.91, while the amended return shows a net invested capital of \$5,798,524.42 and an excess profits credit, including the exemption of \$3,000.00 of \$408,896.71.

The corrected balance sheet for December 31, 1917, as follows:

Balance Sheet Dec. 31, 1917			
Assets:		Liabilities:	
Cash	\$ 189,923.15	Capital Stock	\$ 5,000,000.00
Land	247,003.00	Notes Payable	990,000.00
Buildings	703,711.99	Accounts Payable	264,398.07
Machinery & Equip- ment	1,072,267.55	Mortgage	6,000.00
Patents	35,000.00	Res. for Depreciation	232,959.24
Good Will	109,120.00	Undivided Profits	984,620.79
Investments	221,000.00		
Liberty Bonds	101,447.33		\$ 7,477,978.10
Prepaid Items	235,067.50		
Notes Receivable	236,096.85	Invested Capital	\$ 5,984,620.79
Accounts Receivable		Surplus	984,620.79
	1260,010.25		
Inventory	<u>3,067,330.68</u>		
	\$ 7,477,978.10		

1918.

The original return showed a net income of \$662,320.91, and a tax liability of \$132,582.27.

The amended return shows a net income of \$639,886.52, and a tax liability of \$119,183.08.

The differences in net income are explained as follows:-

The net income of the original return was	\$ 662,320.91
" " " " " amended " "	<u>639,886.52</u>
	22,434.39

The differences in net income are explained as follows:

Additional deduction for Berlin property omitted from original return	\$ 20,000.00
Additional deduction for depreciated omitted from original return	<u>2,434.39</u>
Total	<u>22,434.39</u>
	0

The original return showed a net invested capital \$ 5,830,254.73, giving a credit at 8% plus the exemption of \$3,000.00 of \$469,420.38 while

94-a

the amended return shows a net invested capital of \$5,924,863.63, giving a credit at 8% plus the exemption of \$3,000.00 of \$476,989.09.

The corrected balance sheet for December 31, 1918, as follows:-

Balance Sheet
Dec. 31, 1918

Assets:		Liabilities:	
Cash	\$ 307,750.42	Capital Stock	\$ 5,000,000.00
Land	251,990.69	Notes Payable	750,000.00
Buildings	634,597.34	Accounts Payable	225,302.62
Machinery & Equip- ment	1,237,671.20	Res. for Depreciation	371,021.87
Patents	45,000.00	Undivided Profits	<u>1,388,293.95</u>
Good Will	109,120.00		\$ 7,744,618.44
Investments	201,000.00		
Liberty Bonds	216,560.25	Invested Capital	\$ 6,388,293.95
Canadian Bonds	400.00	Surplus	1,388,293.95
Prepaid Items	21,941.30		
Precious Metals	46,521.18		
Notes Receivable	205,385.79		
Accounts Receivable			
	1,152,881.13		
Inventory	<u>3,113,799.14</u>		
	\$ 7,744,618.44		

1919.

The original return showed a net income of \$1,277,655.63 and a tax liability of \$272,325.39.

The amended return shows a net income of \$1,257,950.76 and a tax liability of \$260,557.95.

The differences in net income are explained as follows:

The net income of original return was	\$ 1,277,655.63
" " " " amended " "	<u>1,257,950.76</u>
Difference	\$ 19,704.87

Additional depreciation taken in amended return	\$ 23,503.51
Depreciation included in ordinary ex- pense in the original return	<u>3,798.64</u>
Difference	<u>19,704.87</u>
	0

The original return showed a net invested capital of \$6,228,970.11 giving a credit at 8% plus the exemption of \$3,000.00 of \$501,317.61, while the amended return shows a net invested capital of \$6,282,605.29 giving a credit at 8% plus the exemption of \$3,000.00 of \$505,608.42.

The corrected balance sheet for December 31, 1919 as follows:

44-a

Balance Sheet
Dec. 31, 1919

Assets:		Liabilities:	
Cash	\$ 265,723.93	Capital Stock	\$ 5,000,000.00
Land	256,090.69	Notes Payable	770,000.00
Buildings	901,027.33	Accounts Payable	298,455.17
Machinery & Equipment	1,453,760.54	Reserve for Depreciation	547,217.11
Patents	47,962.86	Undivided Profits	<u>2,206,673.30</u>
Good Will	109,120.00		\$ 8,822,345.58
Investments	309,139.73		
Liberty Bonds	395.00		
Canadian Bonds	5,000.00	Invested Capital	7,206,673.30
Prepaid Items	48,777.07	Surplus	2,206,673.30
Precious Metals	52,763.96		
Notes Receivable	307,642.46		
Accounts Receivable	1,405,285.28		
Inventory	<u>3,659,656.73</u>		
	\$ 8,822,345.58		

The overpayments of tax liability are as follows:-

The 1913 return	98.19
" 1914 "	118.78
" 1915 "	118.58
" 1917 "	1,913.73
" 1918 "	13,399.19
" 1919 "	<u>11,767.44</u>
Total	\$27,415.91

Less

Underpayment of tax liability
for 1916447.54

Net overpayment

\$26,968.37

It is confidently expected that these explanations of differences between the original and amended returns filed will clearly set forth their character and enable your Office to render a proper audit of these returns.

54a

Very truly yours,

THE S. S. WHITE DENTAL MANUFACTURING CO.

TREASURER.

21

Exhibit B to petition

[Copy—Translation]

Meyers & Co. Import-Export-Commission. Telephone: Centrum 5110. Cable address: Meyers Comp. Wilhelmstr. 42b. ABC code, 5th edition, used

BERLIN W. 66, Mar. 19, 1918, WILHELMSTR. 42B.

MR. HERMAN UBERT,

Berlin-Scheneberg, Sponholzstr. 1:

Hereby I wish to inform you and request you to take note of it that I have been appointed by the Minister of Commerce and Manufactures as sequestrator of the concern The S. S. White Dental Manufacturing Company, m.b.h.

At the same time I wish to inform you hereby that from this day on further purchases in any articles are not allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days, about special matters at once.

As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

Yours truly,

(Signed) EMIL MEYERS,
In the Firm of Meyers & Co.

Exhibit C to petition

[Copy]

IT:CA:M-2. CEO-2114-4-App.

TREASURY DEPARTMENT,
Washington, Sept. 5, 1923.

S. S. WHITE DENTAL MANUFACTURING COMPANY,

% Mr. Charles A. Brown,

819 Fifteenth St. N. W., Washington, D. C.

SIRS: Reference is made to your recent appeal from the action of the Income Tax Unit in denying a deduction claimed for losses in 1918 amounting to \$130,764.34 and in allocating to the year 1917, \$15,435.81 of a total deduction for repairs amounting to \$56,379.34 claimed in your 1918 return.

The Commissioner of Internal Revenue has approved committee on appeals and review recommendation #3075 that the losses in 1918 amounting to \$130,764.34 be disallowed and that deductible expenditures in the amount of \$56,379.34 be allowed in 1918, of which you have previously been advised. A redetermination of your tax liability for 1916 to 1918, inclusive, in accordance with the above and data heretofore presented, indicates an additional tax of \$84,423.60, summarized as follows:

1916 waiver-----	\$610. 01
1918-----	83, 813. 59
	<hr/>
	\$84, 423. 60

The decrease in your tax liability from the amounts indicated in office letter dated December 21, 1922, to those indicated above is due to allowing the full deduction of \$56,379.34 for repairs in 1918.

Your claims for credit of \$335.55, corporation income tax for 1913 to 1915, inclusive, claim for refund of \$1,134.45, corporation income tax for 1916, claims for credit of \$1,801.74 and \$111.99, corporation income and profits tax for 1917, claims for credit of \$13,399.19 and \$11,767.44 corporation income and profits taxes for 1918 and 1919, respectively, have been considered in the foregoing adjustments and will be made the subject of a separate communication from this bureau.

In the final audit of your return for 1917, the overassessment of \$1,628.16 indicated in agent's report dated August 16, 1922, has been changed to an additional tax of \$69.26.

This amount, however, will not be assessed inasmuch as the collection thereof is barred by the statute of limitations.

Adjustment of the tax will now be made in due course.

Respectfully,

J. G. BRIGHT, *Deputy Commissioner.*

24

Exhibit D to petition

[Copy]

NOVEMBER 14, 1923.

HON. BLAKELY D. McCAUGHN,

U. S. Collector of Internal Revenue,

First District of Pennsylvania,

Philadelphia, Pennsylvania.

DEAR SIR: Amended notice and demand for payment to the United States of income and excess profits taxes dated November 7th, 1923, in the amount of \$83,813.59, based on committee on appeals and review recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918, amounting to \$130,764.34, by reason of sequestration of its property "The S. S. White Dental Manufacturing Company, m.b.h., of Berlin, Germany," by the Imperial German Government be disallowed, is received.

This corporation vigorously protests against the payment of said taxes amounting to \$83,813.59, as set forth in said assessment as earnestly as it has heretofore done as shown by the records of the United States Internal Revenue Bureau. Said assessment is unjust, erroneous, and illegal, as the said losses in question upon which it is based are deductible under the law and this corporation says that it should not be required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of September 5, 1923, signed by J. G. Bright, deputy commissioner, initialed IT:CA:M-2.

25 CEO-214-4 App. and your amended notice and demand for payment of tax dated November 7, 1923.

While the United States Internal Revenue Bureau insists upon the payment of the said assessment to you as collector, this corporation distinctly states that the payment by it of said assessment is in no way to be considered a voluntary payment of said assessment and here and now serves notice upon you as collector of United States internal revenue and the Commissioner of United States Internal Revenue that it protests against the payment of said taxes as duress and coercion upon this corporation by the United States Bureau of Internal Revenue and it further states that upon the payment of said assessment it will immediately file a claim for refund of said taxes erroneously and illegally collected from it with you as collector of United States internal revenue and the Commissioner of Internal Revenue upon the proper form of the United States Bureau of Internal Revenue.

Check in the amount of \$83,813.59 is herewith enclosed to pay said assessment as set forth in your amended notice and demand for additional taxes assessed for the calendar year 1918, dated November 7, 1923, and which is paid you as collector of United States internal revenue under strict protest and is in no sense to be considered a voluntary payment of your said amended assessment dated November 7, 1923.

This protest, accompanied by check of this corporation dated November 14, 1923, and numbered B24937 is sent you by registered mail with the request that you please acknowledge receipt of both this protest and check.

26 Claim for refund of the taxes made in your amended notice and demand dated November 7, 1923, will be filed immediately after payment of taxes has reached you.

Very truly yours,

EDWARD C. KIRK, *Vice-President.*

I, R. L. Vaill, secretary of The S. S. White Dental Manufacturing Company, do hereby certify that the following is a true and accurate transcript of a resolution adopted by the board of directors of The S. S. White Dental Manufacturing Company at a stated meeting held in Philadelphia, Pa., on the 27th day of April, 1920, at which a quorum was present, and the same is still in force. Said transcript being taken from the minutes of the proceedings of the meeting.

"RESOLVED: That the president, and/or the vice-president or vice-presidents, are hereby authorized and empowered to execute and deliver any agreement, contract, document or instrument which is necessary for the conduct of the current business of the company, and for that purpose to affix the corporate seal of the company when requisite."

In testimony whereof, I have hereunto affixed my official signature, and the seal of the company, in the city of Philadelphia, this 14th day of November, 1923.

R. L. VAILL, *Secretary.*

261/2

Exhibit E to petition

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Form 942-Jan. 1923
Composite General U. S.
January 14, 1923

(Copy)

CLAIM FOR EXHIBIT B

IMPORTANT
File with Collector of Internal
Revenue where assessment was
made. Not acceptable unless
completely filled in.

- ☐ ABATEMENT OF TAX ASSESSED
☐ CREDIT AGAINST OUTSTANDING ASSESSMENTS
☒ REFUND OF TAXES ILLEGALLY COLLECTED
☐ REFUND OF AMOUNTS PAID FOR STAMPS
USED IN ERROR OR EXCESS

State of Pennsylvania
County of Philadelphia

NOTICE TO COLLECTOR

Collector must indicate in block
where the kind of claim, stamp is
to be returned.

Date received by

Assessment Unit

Stamp here

COLLECTOR'S NOTATION

District

Amount claimed

Date received

Stamp here

Collector of Internal Revenue

TYPE
OR
PRINT

The S.S. White Dental Manufacturing Company of
(Name of taxpayer or purchaser of stamps.) Pennsylvania
211 S. 12th Street,
(Street—give street and number or well as city or town and state.)
Philadelphia, Pennsylvania
(Business address.)

This document, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged Dental Manufacturing
2. Character of assessment or tax Income & Excess Profits Tax for 1918
3. Amount of assessment or stamps purchased From January 1, 1918 to December 31, 1918
4. Reduction of Tax Liability requested (Income and Profits Tax) \$
5. Amount to be abated \$
6. Amount to be refunded (or such greater amount as is legally refundable) \$
7. Dates of payment (see Collector's receipts or endorsements of canceled checks) November 14, 1923 \$ 83,813.52
(If statement covers income tax liability, items 8-11, inclusive, must be answered.)
8. District in which return (if any) was filed First District of Pennsylvania
9. District in which unpaid assessment appears
10. Amount of overpayment claimed as credit \$
11. Unpaid assessment against which credit is asked; period from \$ to \$

Deponent verily believes that this application should be allowed for the following reasons:

Said amount of \$83,813.52 paid to the United States as shown by Internal Revenue receipt attached hereto should be refunded to this taxpayer as said amount paid is based upon an erroneous and illegal assessment as said assessment is based upon Committee on Appeals and Review Recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918 amounting to \$130,764.34 by reason of sequestration of its property "The S.S. White Dental Manufacturing Company, m.b.H. of Berlin, Germany by the Imperial German Government be disallowed. This taxpayer contends that it should not have been required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of September 5, 1923, signed by J.G. Bright, Deputy Commissioner initialed IT:CA:W-2. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of Section 244 of the Revenue Act of 1918 and therefore the amount of \$83,813.59 is refundable to it.

Sworn to and subscribed before me this 16th day

of November 1923

W. Russell

Signed: The S.S. White Dental Mfg. Co.
Edward C. Kirk
Vice President

(Notary) Notary

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

4-1170

27

Exhibit F to petition

[Copy]

IT:CR:E. GN.

TREASURY DEPARTMENT,

Washington, May 15, 1924.

THE S. S. WHITE DENTAL MANUFACTURING CO.,

211 South 12th Street, Philadelphia, Pa.

SIRS: Your claim for the refund of \$83,813.59, additional tax for 1918, assessment in October, 1923, has been examined.

The claim is based upon the statement that the Committee on Appeals and Review, Recommendation No. 3075, upon which the assessment is based, is erroneous in disallowing the loss claimed by you on account of the sequestration of property by the German Government in the amount of \$130,764.34.

In view of the fact that no additional information has been submitted in further support of your contention, the previous action of the Bureau is sustained.

The claim is, therefore, rejected, and will appear on the next schedule to be approved by the Commissioner.

Respectfully,

J. G. BRIGHT,

Deputy Commissioner,(Signed) By L. O. LOHMANN,
Head of Division.

(3602)

28

II. General traverse

Sept. 23, 1924

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises having been entered on the part of the defendant, a general traverse is entered as provided by rule 34.

III. Argument and submission

On October 27, 1925, this case was argued and submitted on merits by Messrs. John F. McCarron and John Hampton Barnes, for plaintiff, and by Mr. Fred K. Dyar, for the defendant.

29 *IV. Findings of fact, conclusion of law, and opinion of the court by Hay, J.*

November 9, 1925

This case having been heard by the Court of Claims upon a stipulation of the facts made between the parties, the agreement as to the facts being in writing and signed by the plaintiff's attorneys, Mr. John F. McCarron and Mr. John Hampton Barnes, and by William J. Donovan, Assistant Attorney General, the court adopts the said stipulation and sets it out as follows as for its

Finding of facts

I

The plaintiff, The S. S. White Dental Manufacturing Co. of Pennsylvania, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office at Philadelphia, in said State, for the purpose of manufacturing and selling artificial teeth, dental tools, instruments, and articles of all kinds, and preparations, apparatus, and articles useful or convenient in the science and practice of dentistry and oral surgery.

II

The S. S. White Dental Manufacturing Co. of Pennsylvania, parent corporation of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, made an income and profits tax return, and also an amended income and profits tax return, to the United States Commissioner of Internal Revenue of its income for the year 1918, as shown by copies of said returns in Exhibit A to petition and hereby made a part hereof by reference, and deducted as a loss in its said United States income and profits-tax return the sum of \$110,764.34, and in its amended income and profits tax return it deducted \$130,764.34 for the year 1918, made to the said United States Commissioner of Internal Revenue, being the value of all the assets of The S. S. White Dental Manufacturing Co., m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918 and which is called its Berlin loss, for the reason that under date of
30 March 19, 1918, Herman Ubert, resident manager of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, was notified by one Emil Meyer, a representative of the then German Imperial Government, that he had been appointed sequestrator by the then German Minister for Commerce and Manufacturers, and by said authority, copy of which is as follows:

EXHIBIT B

[Copy--Translation]

Myers & Co. Import-Export-Commission. Telephone: Centrum 5110. Cable address: Meyers Comp. Wilhelmstr. 42b. ABC code, 5th edition, used

BERLIN W. 66, Mar. 19, 1918, WILHELMSTR. 42B.

MR. HERMAN UBERT,

Berlin-Scheneberg, Sponholzstr. 1:

Hereby I wish to inform you and request you to take note of it that I have been appointed by the minister of commerce and manufactures as sequestrator of the concern The S. S. White Dental Manufacturing Company, m. b. h.

At the same time I wish to inform you hereby that from this day on further purchases in any articles are not allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days; about special matters at once.

As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

Yours truly,

(Signed) EMIL MEYERS,
In the firm of Meyers & Co.

did on March 19, 1918, seize and sequesterate the property of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, for the use of the then Imperial German Government. The property seized and sequestered by the sequesterator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company. Because of the aforesaid sequestration of property, which belonged to The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, the amount of \$130,764.34 was charged off the books of the parent corporation, The S. S. White Dental Manufacturing Co. of Pennsylvania, in the year 1918, as that was the exact amount of the parent corporation's investment in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, as shown by the books of the said The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918.

The last statement received by the S. S. White Dental Manufacturing Co. of Pennsylvania from The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, prior to sequestration of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, by the German sequesterator, showed the value of the tangible and intangible assets of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, books on January 1, 1917, to be \$149,217.01 in United States currency. Due to the fact that all lines of communication for commercial transactions between the United States and Germany had been discontinued as a result of the war then pending between the United States and Germany, it was not possible to reconcile the \$130,764.34, representing the amount of \$149,217.01 contained in the last statement received from The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, and, therefore, at the time of filing its income and profits tax return for 1918, The S. S. White Dental Manufacturing Co. of Pennsylvania

was restricted absolutely in making said deduction in its United States income and profits tax return for the year 1918 on account of its so-called Berlin loss to the amount of \$130,764.34 appearing on its books as a loss.

IV

The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, was organized on January 20, 1896, upon which date the said corporation was entered of record in the Berlin Trade Register under No. 1211. The capital of the said company at the time of organization consisted of marks 60,000, and the names of the stockholders and the amount of stock held by each at the time of organization are as follows:

	Marks
The S. S. White Dental Manufacturing Co. of Pennsylvania.....	50,000
H. M. Lewis.....	2,000
W. H. Gilbert.....	2,000
J. Clarence White.....	2,000
Sam J. Jones.....	2,000
Sam S. White, Jr.....	2,000
Marks.....	60,000

In the course of time there were several changes in the register of the original stockholders enumerated above, due to death, and the stock of a number of the aforesaid parties after death was acquired by The S. S. White Dental Manufacturing Co. of Pennsylvania, the parent corporation. Under date of February 10, 1911, the Berlin Trade Register, at Berlin, Germany, was officially notified by The S. S. White Dental Manufacturing Co. of Pennsylvania, that it had acquired the outstanding shares of the other parties in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, and from said date of February 10, 1911, the parent American corporation became the sole owner of all the stock of the said The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, and was the sole owner of said stock of said corporation at the time of said sequestration by the Imperial German Government on March 19, 1918.

The object of The S. S. White Dental Manufacturing Co. of Pennsylvania, the parent corporation, in organizing The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, was for the purpose of developing a market for the products of the said parent company in Germany and other countries of northern and central Europe. The said The S. S. White Dental Manufacturing Co. of Pennsylvania is and was engaged at the time of the organization of its said German company, The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, in the manufacture of dental goods.

VI

Under date of January 15, 1921, Mr. W. W. Tomb, internal revenue agent of the Bureau of Internal Revenue, Treasury Department, submitted a report to the United States Bureau of Internal Revenue of an investigation made by him of the income and profits tax liability of the parent corporation, The S. S. White Dental Manufacturing Co. of Pennsylvania, for the years 1916, 1917, and 1918, and in said report he disallowed the amount which plaintiff contends was the loss sustained by it in 1918 and shown in its original United States income and profits tax return for the year 1918 as \$110,764.34 on account of the amount invested by it in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, which amount is increased to \$180,764.34, as shown by its amended income and profits tax return for 1918, by reason of the fact that said agent, Tomb, restored to the assets the sum of \$20,000 charged off as depreciation in value by The S. S. White Dental Manufacturing Co. of Pennsylvania in its 1916 United States income-tax return.

In the said report of Internal Revenue Agent Tomb, at page 16, he states why he has disallowed the item relating to the loss claimed by plaintiff and called its Berlin loss on account of the sequestration of its property of the German sequestrator in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, which is as follows:

"The loss of \$110,764.34 on account of the Berlin store has been disallowed as a deduction, for the reason that the taxpayer has a good claim against the German Government, which is thought will be paid eventually. The Berlin store is operated by a German corporation formed expressly for such purpose and owned entirely by the taxpayer. The taxpayer argues that when the German Government seized this property the war was going on without any assurance at that time that the Allies would win, and therefore it was a loss, as definitely ascertained as any loss could be ascertained. However, pending the outcome of the war, the loss would appear to be indefinite, and now the recovery of such claim seems to be only a question of time. According to correspondence in the taxpayer's file, this property was seized early in the year 1918."

And, again, in his report, on page 23, Agent Tomb states:

"The Berlin business was practically suspended during the years 1917 and 1918 on account of the war and the seizure of the property by the German Government, as heretofore stated."

VII

Subsequent to the filing of an affidavit on October 19, 1921, by plaintiff in the Bureau of Internal Revenue in regard to the amount claimed by it as a loss and known as its Berlin loss, a hearing was held in the Income Tax Unit of the Bureau of Internal Revenue

between representatives of the Income Tax Unit and claimant, and said item claimed as a loss and known as its Berlin loss in the dispute between the Bureau of Internal Revenue and plaintiff was gone into in the said conference or hearing and the matter was again referred to a field agent of the Bureau of Internal Revenue for further investigation. Said field agent was A. Goldstein, of the Bureau of Internal Revenue, who completed his report under date of November 12, 1921, and that part of it relating to plaintiff's so-called Berlin loss is as follows:

"On March 19, 1918, the sequestrator appointed by the German Government took over the taxpayer's property and investment in its branch in Berlin. (Copy of the sequestrator's letter is attached.) This sequestration apparently corresponds to the taking over of the property of enemy aliens in the U. S. by the Alien Property Custodian.

"The investment in the Berlin branch at Dec. 31, 1915, at which time the last authentic report was received, stood as follows:

General investment.....		\$108,718.08
Capital stock.....		15,000.00
Furn. & fix.....	87,829.16	
Less rept. depr.....	782.90	
		7,046.26
Total.....		130,764.34

VIII

Under date of December 28, 1921, another hearing was held between representatives of the Bureau of Internal Revenue and plaintiff in the Bureau of Internal Revenue and there were submitted by plaintiff certified copies of excerpts of the minutes of The S. S. White Dental Manufacturing Co. of Pennsylvania as follows:

The S. S. White Dental Mfg. Co.

[Extracts from minutes]

Stated meeting, board of directors, November 25, 1918. The S. S. White Dental Mfg. Co., m. b. h.

The president reported he had referred to our counsel the matter of filing claim with the proper department of our Government for the repayment to us of our loss in connection with this property arising out of its confiscation by the German Government.

The S. S. White Dental Mfg. Co.

[Extract from minutes]

Stated meeting, board of directors, July 29, 1918. The S. S. White Dental Mfg. Co., m. b. h., Berlin

Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock.....	\$15,000.00
B-28, furniture & fixtures.....	7,046.26
B-17, open accounts.....	\$127,670.75
Less formerly adjusted.....	18,952.67
	<hr/> 108,718.08
	<hr/> 130,764.34

and

Whereas in 1916 there was charged as a reserve against this amount the sum of \$20,000; and

Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

Resolved, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated.

IX

After a hearing on December 28, 1921, in the Internal Revenue Bureau between representatives of plaintiff and representatives of the Income Tax Unit, the matter of plaintiff's so-called Berlin loss was again referred to a field agent, Paul D. Helfrich, of the Bureau of Internal Revenue, and under date of August 16, 1922, said field agent submitted his report and referred to claimant's so-called Berlin loss as follows:

"SCHEDULE 10 (A)

"Explanation of items changed

"(a) Loss Berlin branch is fully explained in report of Nov. 18, 1921, and disallowed, since no evidence has been submitted to show that the stock or investment was worthless."

X

In a letter of the Income Tax Unit of the Bureau of Internal Revenue, dated December 21, 1922, plaintiff's claim for its so-called Berlin loss was disallowed, and under date of January 5, 1923, another letter was addressed to plaintiff by the said Income Tax Unit explaining why plaintiff's so-called Berlin loss, deducted in its United States income and profits tax return for 1918, was disallowed, stated the following:

"CEO-2114-4-App. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of section 234 of the revenue act of 1918, and therefore the amount of \$83,813.59 is refundable to it."

XV

The Commissioner of Internal Revenue, under date of May 15, 1924, rejected the said refund claim, as shown by copy of his letter attached to petition and made a part hereof (Exhibit F), which has been filed by plaintiff on November 24, 1923, for the recovery of the \$83,813.59 paid as taxes by it under protest on its so-called Berlin loss.

XVI

No action upon plaintiff's claim has been had before Congress. The said refund claim, in the amount of \$83,813.59, based on plaintiff's so-called Berlin loss, was presented to the United States Commissioner of Internal Revenue, Treasury Department, and the total amount of said refund claim of \$83,813.59 was rejected by the United States Commissioner of Internal Revenue, and plaintiff, prior to filing refund claim, protested against the payment of the said amount of \$83,813.59 to Blakely D. McCaughn, United States collector of internal revenue at Philadelphia, Pa., in writing at the date of payment of the said amount of \$83,813.59, and the said United States Commissioner of Internal Revenue adheres to his said action of rejection. No transfer or assignment of said claim or any part thereof or interest therein has been made. The said claim is now owned by claimant, and no other person or corporation is the owner thereof or is interested therein. Plaintiff has at all times borne true allegiance to the United States and has not in any way voluntarily abetted or given encouragement to rebellion against said government.

XVII

The S. S. White Dental Manufacturing Co. of Pennsylvania has filed a claim with the Mixed Claims Commission against Germany on account of sequestration of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, as follows:

Item No. 1. Investment in German company as of March 18, 1918, date of sequestration, \$167,033.03 less proceeds of sale of German company, \$6,000	\$161,033.06
Item No. 2. Normal estimated earnings from March 18, 1918, to December 31, 1918, \$23,519.43.	
Item No. 3. Normal estimated earnings from January 1, 1919, to December 31, 1919, \$30,500.01.	
Item No. 4. Normal estimated earnings from January 1, 1920, to March 14, 1920, date of release, \$6,366.65.	60,446.50
Item No. 5. Cash balance on deposit in London branch of Dresdner Bank	887.30
Item No. 6. Consequential injury and damage by loss of development in foreign field and otherwise	145,908.40
	<hr/> \$68,333.32

XVIII

Frank H. Taylor, president of The S. S. White Dental Manufacturing Co. of Pennsylvania, has filed an affidavit with the Mixed Claims Commission with respect to his company's claim against Germany, as follows:

EXHIBIT I

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

I, Frank H. Taylor, on oath depose and say that I am president of The S. S. White Dental Manufacturing Company, a corporation organized and existing under the laws of the State of Pennsylvania, the claimant in the memorial to which this affidavit is attached, and that I make this affidavit in support of the said claim.

In 1881 The S. S. White Dental Manufacturing Company was organized to succeed to and acquire the business founded by Samuel Stockton White in the city of Philadelphia in 1844, and has successfully continued it since that date. The company has branches in the cities of New York, Boston, Chicago, Atlanta, and San Francisco, and has subsidiary corporations in Canada, Great Britain, Brazil, and Germany. More than ninety-nine per cent of the capital stock is owned by citizens of the United States.

For seventy-five years the company has produced dental goods of the highest merit and is recognized as the leading manufacturer in its line in the world. It has maintained this position in the face of intense competition, both domestic and foreign, much of it being based on low-priced imitations of its creations. These imitations have been produced in America, in England, and in Germany.

Its foreign business has grown by reason of a demand on the part of the leaders in the profession for reliable and precise appliances and supplies, so that its product reached practically every country.

After a long period of canvassing Europe by travelers, the company established a definite branch house in Berlin twenty-five years ago, and in the face of the competition above recited, this branch has operated at a profit until the events hereinafter stated, its interests having been looked after by highly trained specialists.

When The S. S. White Company of Pennsylvania entered the foreign field in central Europe by the establishment of its Berlin branch in 1896, it carried with its original investment of \$15,000 in the German company a much larger investment represented by fifty years' experience as the leading producer of practically a full line of standard dental material, supplies, and equipment in the world, together with its patents, trade-marks, and good will, owned by the parent concern. With Berlin as its center, the German company, as the chief selling company in central Europe for the S. S. White products, expanded its business gradually to Poland, Russia, Aus-

tria-Hungary, the Balkans, and other countries of central and southern Europe. This company was successful, and a statement of its annual earnings shows that its progress was regular and steady, and that in no year, with the single exception of 1914, from the time of its organization until it was taken over by the sequestrator did it show a loss. A statement showing the invested capital and net earnings from the time of its organization to 1917, inclusive, by years is contained in Exhibit F.

In 1921 I went to Germany to make a personal investigation into the condition and prospect of the German company following an unsuccessful trip in 1919. After inspecting the office and sales-room, conversing with the employees and the leaders of the dental business in Germany, examining in detail the books and records of the German company, I reached the conclusion that the value of the business and good will built up during a period of more than twenty years of successful operation had been completely dissipated as a result of the destructive policy of the German sequestrator, and being convinced that the condition of the German company
39 was hopeless I sold its tangible assets and its lease for the sum of \$6,000, this amount being, in my judgment as a man experienced for 40 years in corporate management, a fair maximum value of the business under the conditions then existing. During my visit to Germany I learned the following facts:

The business of The S. S. White Company in Germany and central Europe and the moral force that it had built up as a result of our twenty years' operation were finally and completely ruined during the period of German sequestration by the character of the administration to which it was subjected by the German sequestrator and by his general misconduct.

First. The sequestrator began his administration in the spirit indicated in his letter declaring himself sequestrator (Exhibit C, page 23). "From this day further purchases of any articles are not allowed any longer, and delivery and sales are to be made from the stock on hand; orders for which no goods are on hand must remain unfilled." In explaining this position to the force, he repeatedly emphasized that it was not the intention, or that he was not permitted, to conduct the business in a profitable manner.

Second. Following this, he ordered the cancellation of all advertising contracts.

Third. From the company's working capital in the Dresdner Bank was withdrawn by the sequestrator:

(a) 50,000 marks, which were invested in German war bonds on April 19, 1918.

(b) 40,000 marks were deposited with the Treuhaender, fuer das feindliche Vermoegeen, June 29, 1918.

These withdrawals resulted in the depletion of the working capital of the German company, so serious that the business was unable to continue as before.

Fourth. The sequestrator, being short of adequate working capital as a result of No. 3, discontinued the wholesale business of the company and confined the company's activities in its retail sales. This wholesale department had been important and profitable, employing traveling representatives and experts, who brought the S. S. White American products definitely before traders in all central Europe.

Fifth. The retail business was continued, requiring the employment of a large staff involving a heavy overhead charge on the business, which in turn dwindled because of the cancellation of all advertising contracts by the sequestrator, and thus became necessarily unprofitable.

Sixth. The sequestrator bought merchandise from German manufacturers and other factors, and resold the merchandise to the business under his control upon debit memoranda without details PAYABLE TO HIMSELF. I personally was shown some of these short memorandas. This practice was followed without any detail explanation of the transactions and is contrary to sound business principles not only in Germany but throughout the world. The prices paid to Mr. Meyers individually for acting as purchasing agent by himself as official sequestrator left only a small margin to cover the cost of handling and selling dental supplies, while it would have been possible, if the transactions had been handled in a regular man-

40 ner at the price at which purchased from the manufacturers, to have conducted this business at a profit. Suspicion naturally attaches to this method of handling purchases, for the reason that any ordinary buyer dealing in good faith with the business for which he is acting submits the manufacturers' invoices in detail as vouchers to justify the amounts paid. The claimant believes upon credible general information and the circumstances surrounding these transactions that they were for the benefit of the German agent, who thus derived unlawful profits therefrom. No account has ever been rendered by him of these transactions, and claimant is not now and may not hereafter be able to definitely prove the same because of the concealment of the acts and the destruction of evidence thereof naturally incident thereto.

Seventh. In addition, Mr. Meyers, without authority from the claimant, took from the funds of the German company marks 4,948 and made a subscription to the German war loan of marks 5,000, which is a complete loss, thus further depleting the capital.

Eighth. He removed furniture from the office of the German company, some to his own office and some to the Enamelline Works at Hoech st a. Main, where his son was employed, paying inadequate prices therefor.

Ninth. Toward the end of the period of official control a burglary occurred under suspicious circumstances, and it was impossible to hold the insurance company for the loss because the sequestrator had failed to keep the burglar alarm in efficient operating condition, as provided by the terms of the insurance policy.

Tenth. The course followed by the sequestrator to destroy the German company could not have been better devised.

The result of this administration was to dissipate the physical property of the German company, to finally destroy the good will, and the entire value of the business as a going concern, which had existed in Germany for more than twenty years prior to its sequestration for the sole purpose of selling the S. S. White products.

This result can only be attributed to the official misconduct of the representative of the German Government. The sources of information as to the amount of the assets and the losses due thereto hereinafter stated are from the books and accounts rendered by the German company to the home office in Philadelphia and from statements made by H. Ubert.

From the beginning all transactions between the German company and the parent corporation were in dollars. All prices were quoted in dollars and all financial reports from the German company to the parent corporation were made in dollars, and the statements of values, earnings, and losses are all stated in dollars in the claim presented by the company.

The claim of The S. S. White Company may be summarized as follows:

Item No. 1. This item of \$161,033.03 represents the value of the physical assets of the German corporation as of March 18, 1918, the date of sequestration as shown by certified reports from the German company and reconciled with the books and records of the American company less the sum of \$6,000 salvage from the sale of the German company in February, 1922. It consisted of—

41 Cash	\$60,565.80
Accounts receivable	50,739.75
Bills receivable	6,485.46
Furniture & fixtures	5,709.59
Merchandise Inv	47,910.69
Expenditures made by American Co. for German Co. not on German Co.'s books	914.40
	172,325.78
Less accounts payable	5,292.75
	167,033.03
Less salvage of German Co.	6,000.00
	161,033.03

The balance sheet of the German company as of March 18, 1918, is appended as Exhibit D. The reconciliation statement is given in Exhibit G.

The president of the claimant company went personally to Germany in January and February, 1922, and as hereinbefore stated negotiated the sale of the physical assets and leasehold of the German company for \$6,000, excepting the funds deposited in the London branch of the Dresdner Bank. (See Exhibit E.)

No claims for patent rights, trade-marks, or premiums on war risk insurance are included in this item. No part of this investment has been returned to or received by claimant.

Item No. 2. This item of \$23,519.93 represents the normal profits of the German company from March 18, 1918, the date of sequestration, to December 31, 1918. Of this year's operation, the first two and a half months were under the control of the former agent of the American company and the other nine and one-half months under the sequestrator. This profit of 1918 should at least have been equal to the profit of 1917, and therefore the amount shown represents the estimated earnings for nine and one-half months of 1918 based on the actual of the prior year. In 1917 business conditions were less favorable than in 1918.

No accounting for or payment of any of these profits has been made to the claimant.

Item No. 3. This item of \$30,560.01 represents the normal estimated profits of the German company for the calendar year of 1919, which was an enormously active year in the dental trade. The business should have produced from 25% to 50% more than in 1918. The 1917 figures increased by \$6,112.00 would amount to \$30,560.01.

No accounting for or payment of any of these profits has been made to the claimant.

Item No. 4. This item of \$6,366.65 represents the normal estimated profits from January 1, 1920, to March 15, 1920, the date on which the sequestration ceased and the property was returned to the agent of the American company. It is based on the 1919 estimated earnings for a period of two and one-half months.

No accounting for or payment of any of these profits has been made to the claimant.

Item No. 5. This amount of \$887.30 represents a cash balance of £182 11 5 on deposit in the London branch of the Dresdner Bank to the credit of The S. S. White Dental Manufacturing Company, m. b. h., which was excepted from the sale of the assets of the German company to Ubert, Reifensahl & Company. This amount was composed of deposits in English money on sales made by the German company in England, and paid for in English money. According to letters from the Dresdner Bank in Berlin (Exhibit E), this amount has been remitted to the main office of the bank in Berlin, and under date of October 22, 1922, a letter was sent to the former office of the German S. S. White Company offering to settle this amount, but the offer was not accepted. No part of this amount has been paid to or received by the claimant.

Item No. 6. This item of \$145,966.40 represents the consequential injury and damage by loss of development work referred to as good will in the central European field due to the sequestration policy of its representative in charge of the property. This item is established as follows:

The average invested capital and the average actual net profits for a ten-year period from 1904 to 1913, inclusive, are used for the reason that this is the last decade of normal peace-time operation. A charge of 6% per annum on the average investment for ten years

is first made against the average net earnings for that period and the balance of the earnings is capitalized on a ten-year basis, thus ascertaining the consequential injury and damage to the claimant through its loss of a valuable selling subsidiary in a foreign field. The detailed computation showing the invested capital and the net earnings is herewith set forth:

	Invested capital	Earnings
1904-----	\$239,897.78	\$19,661.15
1905-----	237,916.04	26,474.82
1906-----	220,099.98	60,304.75
1907-----	209,646.17	25,435.56
1908-----	230,658.20	6,365.86
1909-----	246,886.43	41,005.16
1910-----	217,224.65	35,834.72
1911-----	277,431.56	62,635.42
1912-----	228,303.80	4,914.99
1913-----	192,262.82	1,353.55
	<hr/>	<hr/>
Average invested capital-----	2,300,327.44	283,985.98
		<hr/>
Average net earnings-----		28,398.60
6% of average invested capital-----		13,801.96
		<hr/>
Average earnings in excess of 6%-----		14,596.64
		<hr/>
Balance of earnings capitalized on 10-year basis-----		145,966.40

The ten-year term is used because the good will of the German company was its chief element of value. It had been in successful operation as a profitable and going concern for more than twenty years; it had built up a reputation in Germany and other parts of Europe for the S. S. White dental products in the face of cheaper and inferior goods; and as a result of the acts of misconduct of the sequesteror, heretofore enumerated, and of his management of the property this element of value was completely destroyed, and had it not been for the sequestration and for the improper and illegal acts of the sequesteror the German company could have been operated at a profit and its good will preserved.

At the time of the interference of the German Government with the business of the German company by the appointment of a
 43 sequesteror the company was conducting its business successfully, and its claim is based upon that act of interference and the character of the administration of the business by the sequesteror as above stated.

The business of the company was self-sustaining and during the war period would not have, had it remained in its own control, been affected by the limitation of the ability to import its articles. It would have continued to be a self-sustaining business dealing temporarily in German articles. If, therefore, there had been no interference with the control of the business by the company, or if after such interference it had been fairly and properly managed by the

sequestrator, the company would have been able, when conditions became normal, to reestablish its business and to maintain the good will of its American products without material loss.

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

I, Frank H. Taylor, do solemnly affirm that I am president of The S. S. White Dental Manufacturing Company, a corporation organized and existing under the laws of the State of Pennsylvania, the claimant in the foregoing petition; that I have executed this affidavit and signed my name as president under due and sufficient authority for and on behalf of said corporation; that I have read the foregoing petition and know its contents; and that all and singular the statements therein made are true to the best of my knowledge, except those made on information and belief. As to the statements made on information and belief, they are made as a result of personal inquiry from persons having first-hand knowledge of the facts, and I am advised that they are accurate and believe them to be true.

FRANK H. TAYLOR, *President.*

Subscribed and affirmed to before me this twentieth day of April, 1923, in the city of Philadelphia, State of Pennsylvania. I certify that I have no interest in the claim to which the foregoing petition relates; that I am not the agent or attorney of any person having an interest in said claim, and that I am not related to the said subscriber.

WILLIAM J. RUSSELL,
Notary Public.

XIX

Alfred L. Geiger, attorney for The S. S. White Dental Manufacturing Co. of Pennsylvania, in the matter of its claim before the Mixed Claims Commission, has received the following letter from the Mixed Claims Commission:

MIXED CLAIMS COMMISSION,
UNITED STATES & GERMANY,
UNITED STATES AGENCY,
911 Fifteenth St., Washington, January 30, 1924.

SIR: This is to notify you that the Mixed Claims Commission, United States and Germany, has granted an award in the case of The S. S. White Dental Manufacturing Company, claimant, which provides that the Government of Germany is to pay to the Government of the United States, on behalf of the claimant, the sum
44 of \$70,000.00, with interest thereon at five per cent per annum from February 1, 1920, to the date of payment.

Of course, you will understand that an award does not mean immediate payment, as no fund has yet been provided for the satisfaction of these claims.

I have the honor to be, sir,
Your obedient servant,

ROBERT W. BONYNGE, *Agent*.

Mr. ALFRED L. GEIGER,
Albee Bldg., Washington, D. C.

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of this judgment, the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of \$83,813.59, with interest thereon at the rate of 6 per cent per annum from November 14, 1923. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of \$83,813.59, with interest thereon at the rate of 6 per cent per annum from November 14, 1923, to the date of this judgment.

Opinion

HAY, Judge, delivered the opinion of the court:

It is shown from the findings of fact that the plaintiff made an original and amended income tax and profits tax return for the year 1918 to the Commissioner of Internal Revenue in which it deducted the sum of \$130,764.34, for the year 1918, this sum being the value of all the assets of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918, which the plaintiff designated as its Berlin loss, because on March 19, 1918, the German sequestrator seized and sequestrated its property in Berlin, which consisted of fixtures, cash, book accounts, merchandise, stock, and accounts due and owing the said company.

The plaintiff was the sole owner of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, at the date of the sequestration by the Imperial German Government of the property aforesaid, and at said date the amount of the investment of the plaintiff in its German property, as shown by its books was \$130,764.34. On account of this sequestration of its property the plaintiff charged off its books in the year 1918 the said sum of \$130,764.34, which sum appeared on its books as a loss. The effect of the sequestration of plaintiff's property was to destroy and to cause a loss to the plaintiff, which was absolute in 1918. Afterwards in 1921 the plaintiff sent an agent to Germany to investigate the condition and prospect of the German company, and becoming convinced that its condition was hopeless the said agent sold the tangible assets and its lease for the sum of \$6,000. This sum was duly returned as income for the year

1921. The plaintiff also filed a claim with the Mixed Claims Commission, United States and Germany. That commission has allowed said claim to the extent of \$70,000, with interest at 5 per cent per annum from February 1, 1920, until paid. But no part of said
 45 \$70,000 had been paid to the plaintiff and no fund has been provided for the satisfaction of said claim.

Under date of May 15, 1924, the Commissioner of Internal Revenue rejected the refund claim of the plaintiff, filed under date of November 24, 1923, for the recovery of the sum of \$83,813.59 paid as taxes by it under protest.

The plaintiff's property was sequestered in 1918; the loss suffered thereby was charged off the books of the plaintiff as a loss in 1918; the plaintiff deducted its loss in its income and excess profits tax return for 1918, the year in which it was sustained.

The Commissioner of Internal Revenue seems to have based his action in rejecting the claim of the plaintiff upon the idea that it had a good claim against the German Government, which claim he thought would be eventually paid. The following extract from the decision of the committee on appeals and review, which was approved and adopted by the commissioner, will more fully explain his view of the case:

It is the committee's opinion that the act of sequestration in 1918, in and of itself, did not result in an actual sustained loss in that year, which loss was susceptible of being measured in dollars and cents. It is also the committee's opinion, and this seems to be borne out by subsequent events, that by such act the appellant was temporarily dispossessed of property and investment in the Berlin branch with a consequent cessation of business and inability to realize possible profits during the indefinite period of sequestration. It is apparent that concurrent with the act of sequestration there arose a right or claim against the German Government for loss or damage resulting therefrom, which right or claim at the time could not be estimated as to value by any reasonable process of calculation. Losses to be deductible must ordinarily be evidenced by a completed or closed transaction.

The parts of the revenue act of 1918 (40 Stat. 1057) which are pertinent to this case are as follows:

SEC. 232. That in the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income * * * less the deductions allowed by section 234, * * *.

SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise.

As there is no controversy with respect to the correctness of the amount of tax assessed and collected, the only question for determination is whether or not the plaintiff suffered a deductible loss during

the calendar year 1918 within the meaning of the statute above quoted.

It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918.

46 The loss was complete for the year 1918; it could be and was determined; the transaction for that year was closed and completed. The loss has continued down to the present time with the exception of \$6,000 salvaged from the property in 1921. It seems the commissioner loses sight of the fact that the plaintiff will only receive from Germany the sum of \$70,000 and when it will receive that is wholly problematical; so that according to his own reasoning the commissioner should have at least allowed the plaintiff the sum of \$60,764.34, the difference between the sum originally charged to the plaintiff and the amount which has been allowed on its claim.

The loss sustained by the plaintiff was in our opinion a loss deductible during the calendar year 1918 within the meaning of the statute. Because the plaintiff has a claim which may or may not be paid does not alter the fact that it suffered this loss in the year 1918 and has continued to suffer it down to the present time. The Government can not continue indefinitely to hold its taxpayers to account upon the idea that something may happen in the future which will change existing conditions. Losses, which are deductible, it is said, "must be evidenced by closed and completed transactions." Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.

Judgment will therefore be awarded the plaintiff in the sum of \$83,813.59, with interest.

It is so ordered.

GRAHAM, Judge; DOWNEY, Judge; BOOTH, Judge; and CAMPBELL, Chief Justice, concur.

47

V. Judgment

Nov. 9, 1925

At a Court of Claims held in the city of Washington on the 9th day of November, A. D. 1925, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiff, and do order and adjudge that the plaintiff, as

aforesaid, is entitled to recover and shall have and recover of and from the United States the sum of eighty-three thousand eight hundred and thirteen dollars and fifty-nine cents (\$83,813.59), with interest thereon at the rate of 6 per cent per annum from November 14, 1923, to the date of this judgment.

By the COURT.

48 [Clerk's certificate to foregoing papers omitted in printing.]

[File No. 31680. Court of Claims. Term No. 957. The United States, petitioner, vs. The S. S. White Dental Manufacturing Company of Pennsylvania. Petition for a writ of certiorari and exhibit thereto. Filed February 5th, 1926. File No. 31680.]

○



Supreme Court of the United States

Order allowing certiorari

Filed April 19, 1926

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 957

THE UNITED STATES, PETITIONER

v.

THE S. S. WHITE DENTAL MANUFACTURING COM-
pany of Pennsylvania

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIO-
RARI TO THE COURT OF CLAIMS

OPINION OF THE COURT OF CLAIMS

The opinion in this case has not yet been officially reported, but it appears at pages 66-68 of the record.

JURISDICTION

Judgment of the Court of Claims was rendered November 9, 1925. (R. 68.) The petition for certiorari was filed February 5, 1926 (R. 69). Jurisdiction to issue the writ is conferred upon the Court by Section 3 (b) of the Act of February 13, 1925 (chap. 229, 43 Stat. 936, at 939).

THE QUESTION INVOLVED

Did the claimant below, on the facts found and as a result of the sequestration of the property and business of its German subsidiary by the German government on March 19, 1918, sustain a loss during the taxable year 1918 not compensated by insurance or otherwise within the contemplation of the Revenue Act.

STATEMENT OF THE CASE

The claimant sued to recover taxes paid by it under protest in the amount of \$83,813.59, alleged to have illegally collected, and claim for refund of which had been denied. The basis of its claim was that it had sustained a deductible loss during the year 1918 within the meaning of Section 234 (a) (4) of the Revenue Act of 1918 (chap. 18, 40 Stat. 1057, 1078), but which had not been allowed by the Government in the computation of its net taxable income for 1918. (R. 57, 58.)

The claimant had a subsidiary company in Berlin, Germany, the property of which was seized on March 19, 1918, by the then Imperial German Government, acting through an agent known as the sequestrator. On that account, in its tax return for the year 1918 the claimant deducted a loss of \$110,764.34. Later an amended return was filed and a loss of \$130,764.34 was deducted for the year 1918. (R. 50.)

In Finding II of the Court of Claims it is stated that the investment was charged off the books in

1918. (R. 51.) What is meant by this finding is explained in Finding VIII (R. 54, 55), which sets the resolution of the board as follows:

Stated meeting, board of directors, July 29, 1918.

The S. S. White Dental Mfg. Co., m. b. h., Berlin.

Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock.....	\$15,000.00
B-28, furniture & fixtures.....	7,046.26
B-17, open accounts.....	127,670.75
Less formerly adjusted.....	18,952.67
	<hr/>
	108,718.08
	<hr/>
	130,764.34

and

Whereas in 1916 there was charged as a reserve against this amount the sum of \$20,000; and

Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

Resolved, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated.

This amount, claimed as a loss in 1918, was the investment of the claimant in the subsidiary company as shown by the books on December 31, 1915, at which time the last authentic report was received. (R. 50, 51, 54.) The loss was disallowed by the committee on appeals and review of the In-

ternal Revenue Bureau (R. 56), and by the Commissioner of Internal Revenue, because it was not a closed and completed transaction in 1918. (R. 49, 58.)

The property of the Berlin company was released and returned to the claimant or its subsidiary on March 14, 1920. (R. 63.) The physical assets and leasehold of the subsidiary were sold by claimant in 1922 for \$6,000. (R. 62.) In 1923 the claimant filed a claim with the Mixed Claims Commission against Germany in the total sum of \$368,333.32 on account of the loss of its subsidiary (R. 58), and on January 30, 1924, was notified by the agent of that commission that the claim had been allowed for \$70,000, with interest at 5 per cent from February 1, 1920, to the date of payment. (R. 65.)

The Government contended that the charging off of the loss for 1918 was of no effect of itself and that no loss could be deducted under Section 234 (a) (4) of the Revenue Act of 1918 (hereinafter set out), unless the loss was actually sustained as evidenced by a closed and completed transaction. On the Government's theory there was no closed and completed transaction in 1918.

The Court of Claims held that "the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms." (R. 68.)

THE STATUTES

The pertinent parts of the Revenue Act of 1918 (40 Stat. 1057) are as follows (R. 2):

Sec. 232. That in the case of a corporation subject to the tax imposed by section 230 the term "net income" means the gross income * * * less the deductions allowed by section 234 * * *.

Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise.

ARGUMENT

I

THE SEQUESTERED PROPERTY HAD NOT BEEN *lost* IN 1918, WITHIN THE CONTEMPLATION OF THE STATUTE

"Sequestered" and "confiscated" are not synonymous. The word "sequestered" in contemplation of international law is defined by Webster's Dictionary as follows:

To appropriate under the right of pre-emption.

or—

The right of belligerents to seize and purchase at an appraised price contraband other than absolute contraband.

The word "confiscate" is defined by the same authority as—

To cause a person to forfeit property to the State.

The property sequestered by the German government in the instant case was taken over by that government through the sequestration during the period of hostilities, and the record does not disclose or indicate that respondent's title to the property was thereby forfeited or that the German government in any way indicated its non-liability for damage or loss resulting therefrom. The property was returned to the respondent by the German government after the cessation of hostilities and, as is hereafter shown, the right was possessed by respondent to compensation for the loss sustained on account of such sequestration of its property. The record further shows that the respondent has recognized and vigorously asserted its rights in that regard.

It is apparent, therefore, that at the time respondent's property was sequestered in 1918 it was not definitely known whether or not ultimately there would be a loss, and if so, the amount thereof. Before the end of 1918, as will be demonstrated, it had been established that in all likelihood this damage, with other similar damage, would be compensated by the German government. The transaction was not closed and completed during the year 1918, and no loss was definitely sustained during the year in which respondent sought to take its deduction.

Furthermore, the situation in the instant case seems to be disclosed by the respondent's own action and attitude. While, as pointed out, in the statement of the case (page 1, petition and transcript of record), the Court of Claims in Finding II (R. 51) stated that the investment was charged off the books in 1918, what was meant by Finding II is disclosed in Finding VIII (R. 55), which shows that in 1916 \$20,000 had been set up as a reserve for losses on the investment of \$130,764.34, and it was resolved in 1918 "that additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, *until liquidated.*" (Italics ours.) This seems clearly to indicate that the net value of the investment, as shown on the books, was reduced in 1916, before the seizure, to \$110,000, and it was further reduced, as a result of the seizure, \$60,000 in 1918, and the balance in 1919. This appears to indicate that the company did not regard all the property as *lost* in 1918.

Finally, the events of 1918, of which the Court may take judicial notice, will further indicate that there was no loss sustained in 1918. Germany was defeated in 1918, and before the end of that year it was certain that she would be made to return seized American property and pay for that part of it lost or damaged, to the extent she was financially able to pay. The Armistice agreement was concluded between the allied and associated governments and Germany on November 11, 1918. In the course of the pre-armistice negotiations it was

agreed by Germany and by the principal allied and associated powers "that compensation will be made by Germany for all damage done to the civilian population and loss of their property by the aggression of Germany by land, by sea, or from the air." It was stipulated that this would be one term of the peace treaty about to be negotiated. (See note of November 5, 1918, from Secretary of State Lansing to the Swiss minister in charge of German interests.)

Clause XIX of the Armistice agreement states:

With the reservation that any subsequent concessions and claims by the allies and the United States remain unaffected, the following financial conditions are imposed:

Reparations for damage done * * *

(Armistice agreements, Senate Document No. 147, 66th Congress, First Session.)

The treaty between the United States and Germany restoring friendly relations was signed at Berlin August 25, 1921. The same treaty was ratified by the Senate on October 18, 1921, by the President on October 21, 1921, and by Germany on November 2, 1921 (42 Stat., Part 2, 1939).

The Treaty of Versailles was signed on June 28, 1919, and Articles 231 and 232 thereof provide that Germany will make compensation for all damage done to the civilian population, and in Annex I for damage for all property which has been carried off, seized, injured or destroyed by the acts of Germany (see Treaty Series No. 658, pp. 30, 31, 34, 35).

The Mixed Commission on Claims, created under the agreement of August 10, 1922 (42 Stat., Part 2, 2200), which commission considered and passed upon the claim herein, thus carried on the provisions of the Treaty of Berlin which embodied and gave effect to the provisions of the Armistice agreement. Thus in November, 1918, so far as it might be done, it had been provided that the respondent would be compensated. There was therefore no justification for a claimed loss for that year.

II

THE MEANING OF THE WORD "LOSSES" AS USED IN THE REVENUE ACT OF 1918

The Revenue Act of 1918, as well as prior and subsequent revenue acts, provides for different classes of deductions, one of which is on account of "losses sustained during the taxable year and not compensated for by insurance or otherwise." (Sec. 234 (a) (4).) Another class of deductions is "debts ascertained to be worthless and charged off within the taxable year." (Sec. 234 (a) (5).)

While the statute does not expressly provide that deductions for losses shall be evidenced by closed and completed transactions, it does in effect so provide with respect to deductions on account of worthless debts, since it provides that debts to be deductible must be ascertained to be worthless and must be charged off within the taxable year, thus constituting a closed and completed transaction.

The United States Board of Tax Appeals has considered the matter of allowance of deductions for bad debts, applying the rule that such deductions must be evidenced by closed and completed transactions, in the following cases:

Appeal of Greenville Textile Supply Co.,
1 B. T. A. 152.

Appeal of Steele Cotton Mill Co., 1
B. T. A. 299.

Appeal of C. S. Webb, Inc., 1 B. T. A. 269.

Appeal of Alemite Die Casting & Mfg. Co.,
1 B. T. A. 548.

Appeal of Harry Gottlieb, 1 B. T. A. 674.

The word "losses," as used in Section 234(a) (4) of the Revenue Act of 1918 denotes definitely closed and completed transactions which result in the diminution of the net worth or income of the taxpayer. The term "losses sustained," within the meaning of the statute, does not have reference to the conversion of one kind of property into another, such as the conversion of a tangible asset into an intangible one, whereby the net worth of the taxpayer has not been changed. A deductible loss under the statute must be more than an apparent or possible loss; it must be one that has been definitely and finally sustained, with respect to which there does not exist any contingency which may affect the question of whether or not a decrease of value or diminution of net worth has in fact occurred. In connection with the term "losses sustained," the statute further provides the qualification "and not compensated for by insurance or

otherwise." It is thus apparent that within the meaning of this statute a loss is not sustained so long as there is any contingency which may result in compensation for the loss, whether by insurance or otherwise.

A careful consideration of the provisions in the Revenue Act and of the method devised by Congress for the assessment and collection of internal revenue taxes can lead only to the conclusion that a deductible loss under the statute must be evidenced by a closed and completed transaction, which must result in a definitely ascertainable decrease of net worth. Thus, where a taxpayer involuntarily parts with the possession of physical or tangible property, and in the ordinary sense has sustained a loss of that property, but concurrently therewith a claim arises in favor of the taxpayer for compensation therefor, and a reasonable expectancy exists for the recovery of such compensation, then a deductible loss under the Revenue Act has not occurred, for the reason that the transaction is in effect only a conversion of a tangible asset into an intangible asset, and the taxpayer's net worth remains the same. If thereafter it be determined that the claim for compensation has become worthless, as through the insolvency of the debtor or by arbitrary refusal of a sovereign government to make restitution or allow compensation, or the claim is otherwise determined to be uncollectible, a deductible loss would thereupon

and at that time be sustained by the taxpayer with respect to such claim or intangible asset. This leads to a consideration of the matter of the determination of a loss as affecting the question of when the loss is sustained.

III

DISTINCTION BETWEEN THE TIME WHEN A "LOSS" IS SUSTAINED AND THE ASCERTAINMENT OR DETERMINATION OF THE AMOUNT OF SUCH LOSS

Section 234 (a) (4) of the Revenue Act of 1918 provides that, in computing the net income of a corporation, there shall be allowed as deductions "losses sustained during the taxable year and not compensated for by insurance or otherwise." In the instant case respondent seeks to construe the provision above quoted as meaning that the loss must be compensated for during the taxable year in order to prevent its being deductible, thus in effect making the provision in question read, "losses sustained during the taxable year and not compensated for *during the taxable year* by insurance or otherwise." The vice of such a construction is at once apparent upon consideration of the results which would flow therefrom. Such a construction would inevitably lead to unjust discrimination and the unequal assessment and collection of taxes in the cases of taxpayers similarly situated with respect to losses sustained during the same taxable year. For example, if A sustained a

loss by fire during the month of December, 1918, such loss being compensated by insurance, if the compensation was received by A before the expiration of the year 1918, clearly no deductible loss would be sustained. If B sustained a loss by fire at the same time and under the same circumstances, but his loss was not compensated by insurance during the taxable year, although a claim in his favor may have arisen at the time, he would be entitled, under the construction of the statute urged by respondent, to deduct the amount of such losses and thereafter treat the compensation as taxable income for the year in which received. If such compensation was so received by B after Congress had provided lower rates of taxation in the Revenue Act of 1921 or the Revenue Act of 1924, this would result in the payment of a proportionately less tax by B than by A, notwithstanding the only difference with respect to their losses was the fact that A received compensation for his loss during the taxable year 1918, whereas B received compensation for his loss in a subsequent year. This in effect is the result sought by respondent in its action herein. Clearly such was not the intent of Congress. Further, it is confidently asserted that the language used in the statute does not require, and indeed will not permit such a construction to be placed thereon.

The question of when a loss is sustained is in no-wise dependent upon when the loss is discovered,

nor is it dependent upon how the taxpayer may regard the transaction giving rise thereto. The Revenue Act of 1918 imposes no duty upon the taxpayer to determine the loss and charge same off his books during the taxable year as in the case of a bad debt, or to set up reserves to liquidate it, in order to constitute a deductible loss. The question of whether a deductible loss has been sustained during the taxable year, and not compensated by insurance or otherwise, must be determined solely from the facts of each case. Thus a taxpayer may suffer a loss by burglary or embezzlement during the taxable year 1918, and the amount of such loss, or indeed the very fact of such loss, may not be discovered until after the close of that year; but if the amount of such loss is definitely ascertainable by any reasonable method of computation and it appears to be a final loss, not compensated by insurance or otherwise, the taxpayer sustained the loss during the year 1918. He is therefore entitled to deduct such loss from his taxable income for that year.

In the instant case, the facts as found show that respondent did not sustain a loss during the year 1918 by reason of the sequestration of the property of the Berlin company by the German government, not compensated by insurance or otherwise, and evidenced by a closed and completed transaction. On the contrary, the facts show that, concurrently

with the sequestration of the property of its Berlin company, a claim arose in favor of respondent against the German government for any loss resulting therefrom; that during 1918 the military defeat of Germany made restoration or confiscation certain, barring her insolvency; that the property sequestered in 1918 was returned to respondent by the German government in 1920, a part of which property it sold in 1922 for the sum of \$6,000.00; that in 1923 respondent presented to the Mixed Claims Commission on account of its said loss a claim against Germany for the sum of \$368,333.32, which was subsequently allowed by the Mixed Claims Commission in the sum of \$70,000.00. It is apparent, therefore, that the act of sequestration in and of itself did not result in any loss to respondent during the year 1918, but merely resulted in the conversion of mixed assets (tangible and intangible) into an intangible asset. It may be further stated that the facts show that respondent has not yet sustained any deductible loss by reason of said sequestration, and if the claim allowed in its favor by the Mixed Claims Commission is ultimately paid, no deductible loss will be sustained, since the Mixed Claims Commission has in effect determined that the sum of \$70,000.00, with the interest specified, will compensate respondent for its loss resulting from said sequestration.

IV

REENACTMENT OF STATUTE AS ADOPTING PRIOR ADMINISTRATIVE CONSTRUCTION

The Revenue Act of 1916, approved September 8, 1916 (Chap. 463, 39 Stat. 756, 767, 768), provided in pertinent part as follows:

Sec. 12. (a) In the case of a corporation
 * * * organized in the United States,
 such net income shall be ascertained by de-
 ducting from the gross amount of its in-
 come received within the year from all
 sources—

* * * * *

Second. All losses actually sustained and
 charged off within the year and not compen-
 sated by insurance or otherwise * * *.

Regulations No. 33 promulgated under the Revenue Act of 1916 provided in pertinent part as follows:

LOSSES

ART. 147. When deductible.—The deduc-
 tion for losses must represent losses not com-
 pensated for by insurance or otherwise and
 which were charged off and *actually sus-
 tained within the year as evidenced by
 closed and completed transactions.* * * *
 (Italics ours.)

This regulation constituted an administrative construction of the statute by the executive department of the Government charged with its enforcement.

Thereafter, in the Revenue Act of 1918, Section 234 (a) (4), hereinabove quoted, Congress reenacted substantially the same provision as contained in the Revenue Act of 1916, by providing that in computing the net income of a corporation there shall be allowed as deductions:

Losses sustained during the taxable year and not compensated for by insurance or otherwise.

The Department continued to construe this provision as meaning that such losses to be deductible must be evidenced by closed and completed transactions. (Regulations 45, Art. 141.)

Again, in the Revenue Act of 1921, approved November 23, 1921 (Chap. 136, 42 Stat. 227, 254, 255), Congress reenacted substantially the same provision with respect to corporate deductions on account of losses, and in addition thereto specifically conferred on the Commissioner authority to permit such losses to be accounted for as of a different period when in his opinion such accounting was necessary in order to clearly reflect the income. The Revenue Act of 1921 provided:

Sec. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance

or otherwise; unless, in order to clearly reflect the income, the loss should in the opinion of the Commissioner be accounted for as of a different period. * * *

The regulations issued under the Revenue Act of 1921, and which constituted the Department's construction of the meaning of this provision, were substantially the same as under the prior Acts. (Regulations 62, Art. 141.)

The Revenue Act of 1924, approved June 2, 1924, (Chap. 234, 43 Stat. 253, 283, 284), provides:

SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise. * * *

The regulations promulgated under the 1924 Act likewise do not differ substantially in this respect from the prior regulations. (Regulations 65, Art. 141.)

It is therefore respectfully submitted that Congress, in reenacting in the Revenue Acts of 1918, 1921, and 1924 substantially the same provisions as were contained in the Revenue Act of 1916 with respect to corporate deductions for losses, must be presumed to have known the administrative construction given to those provisions by the executive department charged with the administration of the

revenue laws and to have given legislative approval thereto.

“ Where the meaning of a statute is doubtful, the construction given it by the department charged with its execution should be given great weight, for the reason, among others, that if such construction does not properly interpret the meaning and intent of Congress, Congress, by amendment or reenactment of the statute, can readily correct the same. This presumption that the department charged with the execution of the law has properly interpreted it is strengthened in proportion to the length of time such construction has obtained without challenge by the law-making power, so that, where such executive construction has been long continued, a court has a right to presume that Congress is content therewith. This exhausts the full force and effect of such construction, and, while not binding upon a court, nevertheless a court will be slow to depart therefrom, unless the language of the statute itself absolutely requires it to do so.”

Mayes, Collector, v. Paul Jones & Co.,
270 Fed. 121, 129-130.

Edwards, Collector, v. Wabash Ry. Co.,
264 Fed. 610.

Malley, Collector, v. Walter Baker & Co., Limited, 281 Fed. 41.

United States v. Cerecedo Hermanos y Compañía, 209 U. S. 337.

Maryland Casualty Co. v. United States,
251 U. S. 342, 355.

National Lead Company v. United States,
252 U. S. 140.

CONCLUSION

To the reasons advanced for the granting of the writ which are set out at page 3, printed petition and transcript of record, and the argument in support thereof, *supra*, it may be added that the precise question presented in this case has not heretofore been the subject of consideration by the Federal courts. In the case of *United States Trust Co. of New York v. Gilchrist*, 206 N. Y. Supp. 485, 488, the court held that it was for the taxpayer to establish his right to a deduction and the amount thereof. In *Re Harrington*, 1 F. (2nd) 749, the court held that it was sufficient when the plaintiff showed that the stock involved was known to be worthless and a satisfactory showing was made of its worthlessness; that the company was insolvent and had suspended operations, and in such a case it was unnecessary to await the formal termination of the receivership.

The Court of Claims in its opinion (R. 66-68), decides the question adversely to the Government's contention, but cites no authorities and lays down no principle, but says (R. 68):

The loss sustained by the plaintiff was in our opinion a loss deductible during the calendar year 1918 within the meaning of the statute. Because the plaintiff has a claim

which may or may not be paid does not alter the fact that it suffered this loss in the year 1918 and has continued to suffer it down to the present time. The Government can not continue indefinitely to hold its taxpayers to account upon the idea that something may happen in the future which will change existing conditions. Losses, which are deductible, it is said, "must be evidenced by closed and completed transactions." Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.

It is urged that, in view of the provision in the regulations of the Internal Revenue Bureau that no loss can be deducted unless it has been actually sustained, as evidenced by a closed and completed transaction, which regulation has been consistently followed, and in view of the great number of taxpayers who are directly affected, the case is of large importance. As stated in the petition for certiorari, the claims arising by reason of sequestration of property by Germany make up but a small class as compared with those that come within the general principle. It is urged, there-

fore, that the petition for writ of certiorari to the Court of Claims be granted.

WILLIAM D. MITCHELL,
Solicitor General.

HERMAN J. GALLOWAY,
Assistant Attorney General.

FRED K. DYAR,
Attorney.

March, 1926.



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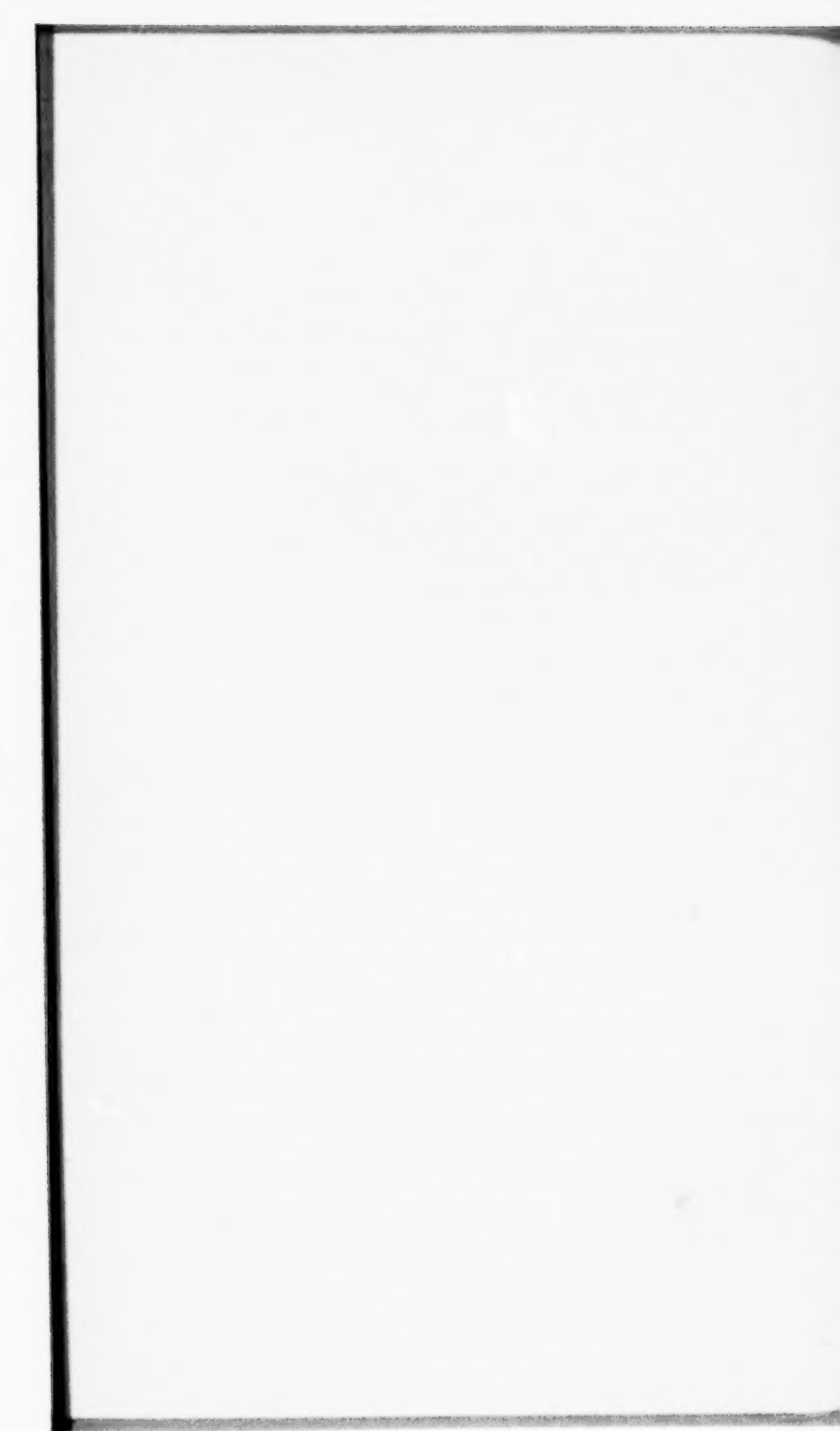
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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 291

THE UNITED STATES, PETITIONER

v.

THE S. S. WHITE DENTAL MANUFACTURING
Company of Pennsylvania

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 66) is reported in 61 Ct. Cls. Reports, page 143.

GROUND'S OF JURISDICTION

The judgment of the Court of Claims was rendered on November 9, 1925. (R. 68.) The petition for certiorari was filed February 5, 1926 (R. 69), and granted. Jurisdiction of this Court to issue the writ of certiorari to the Court of Claims is conferred by Section 3 (b) of the Act of February 13, 1925 (c. 229, 43 Stat. 936, 939).

THE QUESTION INVOLVED

The only question in the case is the right of the respondent, the owner of all the shares of stock of a German company, to deduct in 1918 from its gross income the sum of \$130,764.34, which was its investment in that German company, as a loss sustained in 1918, because in March, 1918, the German Government sequestered and took over the possession and management of the assets of the German company, although there was a substantial prospect of return of or payment for the property taken.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of Section 234 of the Revenue Act of 1918 (c. 18, 40 Stat. 1057, 1077, 1078), are as follows:

SEC. 234. (a) That in computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise; * * *.

Articles 141 and 144 of Treasury Regulations 45 provide:

ART. 141. *Losses*.—Losses sustained during the taxable year and not compensated for by insurance or otherwise are fully deductible (except by nonresident aliens) if (a) incurred in the taxpayer's

trade or business, or (b) incurred in any transaction entered into for profit, or (c) arising from fires, storms, shipwreck or other casualty, or from theft. They must usually be evidenced by closed and completed transactions.

ART. 144. *Shrinkage in securities and stocks.*—A person possessing securities, such as stocks and bonds, can not deduct from gross income any amount claimed as a loss on account of the shrinkage in value of such securities through fluctuation of the market or otherwise. The loss allowable in such cases is that actually suffered when the securities mature or are disposed of.

STATEMENT

The respondent sued in the Court of Claims to recover income taxes paid by it under protest in the amount of \$83,813.59, alleged to have been illegally collected, and claim for refund of which was denied. (R. 3 et seq.) The basis of its claim was that it had sustained a deductible loss during the year 1918 within the meaning of the provisions of the Revenue Act of 1918, above quoted, but which loss had not been allowed by the Commissioner of Internal Revenue in the computation of its net taxable income for 1918. (R. 57, 58.)

The findings of the Court of Claims show that The S. S. White Dental Manufacturing Company of Pennsylvania, the respondent, is a Pennsylvania corporation engaged in manufacturing and dealing in dental supplies. (R. 50.) In 1896 there was

organized The S. S. White Dental Manufacturing Company, m. b. h., of Berlin, Germany, of which German corporation the respondent owned a majority of the capital stock. Thereafter respondent acquired all of the outstanding shares, and since February 10, 1911, respondent has been the sole owner of the stock of the German company (R. 52), which was treated in the findings as a branch of the American company. The property of the German company seems to have been located in Germany. On March 19, 1918, the resident manager of the German company received the following notice. (R. 50.)

(Copy—Translation)

Meyers & Co. Import-Export-Commission.
Telephone: Centrum 5110. Cable address: Meyers Comp. Wilhelmstr. 42b.
ABC code, 5th edition, used

BERLIN W. 66,

Mar. 19, 1918, Wilhelmstr. 42B.

Mr. HERMAN UBERT,

Berlin-Scheneberg, Sponholzstr. 1:

Hereby I wish to inform you and request you to take note of it that I have been appointed by the minister of commerce and manufactures as sequestator of the concern The S. S. White Dental Manufacturing Company, m. b. h.

At the same time I wish to inform you hereby that from this date no further purchases in any articles are allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for

which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days; about special matters at once.

As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

Yours truly,

(Signed)

EMIL MEYERS,

In the firm of Meyers & Co.

The German assets were thereupon taken over and the business of the German company operated by the German sequestrator. There is nothing in the record in the nature of proof of German law to show the exact legal effect of this sequestration, and the case was not closely tried on that point, but the findings show that the income tax unit of the Bureau of Internal Revenue once concluded (R. 54) that "this sequestration apparently corresponds to the taking over of the property of alien enemies in the United States by the Alien Property Custodian," and the dealings by the sequestrator with the German company and its assets and the disposition of them made during and after the war by the German authorities as disclosed by the findings may justify the inference that the sequestration was similar in legal effect and purpose to that accom-

plished under the Trading with the Enemy Act of the United States. The German company and its property was managed under the direction of the German sequestrator until March 15, 1920, when the possession of the German business and assets was released and returned to the German corporation and its officers. (R. 63.) In 1919 the president of the respondent went to Germany to look into affairs there, but the trip was not a success. He went again in 1921, and the affidavit he afterwards filed before the Mixed Claims Commission discloses that he then became convinced that the condition of the German company was hopeless, and in 1922 he sold its tangible assets and its lease for the sum of \$6,000, which he considered a fair value of the business under the conditions then existing. (R. 60.) The explanation of this shrinkage in assets may be found in the same affidavit before the Mixed Claims Commission. (R. 59-61.) The sequestrator in April, 1918, withdrew 50,000 marks of the company's capital and invested it in German war bonds. In June, 1918, he withdrew 40,000 more, and deposited that amount with Treuhänder, fuer das feindliche Vermögen, which translated means: Trustee for the enemy estate. (R. 60.)

Being thereby short of working capital, the sequestrator discontinued the wholesale business and continued the retail business at a loss. Besides disposing of the capital of the company for the benefit of the German Government in this way, the sequestrator seems to have consistently looted

the company for his own benefit, as he bought merchandise from the German manufacturers in his own name and then resold the merchandise to the business under his control without any disclosure of the profit he made on these transactions. (R. 61.) The shrinkage in value seems to have resulted from gross mismanagement and misconduct by the sequestrator, as well as from other disposition of assets. While the result shows that the amount received for the tangible assets and lease of the German company in 1922 was \$6,000, it does not show what has become of the German war bonds purchased by the sequestrator out of its assets, or whether there has been a total loss of that investment. In April, 1923, the respondent filed its claim before the Mixed Claims Commission on account of the loss claimed to be suffered by the German company. Details of its claim with respect to the value of the physical assets of the German corporation at the date of sequestration, March 18, 1918, are set forth in the record (R. 62), and aggregated \$161,000. On January 30, 1924, respondent received notice of an award by the Commission on its claim of the sum of \$70,000, with interest thereon at 5% per annum from February 1, 1920, to date of payment. The award included the statement (R. 66):

Of course, you will understand that an award does not mean immediate payment, as no fund has yet been provided for the satisfaction of these claims.

It is common knowledge that legislation making provision for payment of such claims has been pending in Congress, having passed the House. (H. R. 15009, 69th Congress, 2d Session.)

In some places in the record it is stated that The S. S. White Dental Manufacturing Company of Pennsylvania, this respondent, charged off in the year 1918 the then book value of its investment in the German company in the sum of \$130,764.34. (R. 51.) Elsewhere in the record it is disclosed that this is not just what the American company did. A resolution passed by its Board of Directors on July 29, 1918 (R. 55), shows that on one side of the ledger the book value of the American company's investment in the German company as of December 31, 1917, was \$130,764.34. This resolution discloses that in the year 1916 there had been charged as reserve against this amount the sum of \$20,000, so that the net book value December 31, 1917, must have been \$110,764.34. This resolution stated:

Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

Resolved, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated.

What the American company actually did on its books was to charge off \$20,000 in 1916 and \$15,000 quarterly commencing March, 1918. However, in making its return in 1919 for the year 1918 the

respondent made a deduction for the year 1918 of \$110,764.34, which was the full net book value of the German investment December 31, 1917, and which took into account the fact that \$20,000 of the original investment had been charged off in 1916. Later the respondent filed an amended return for 1918, in which it attempted to take a deduction of \$130,764.34 in 1918 as a realized loss in that year. (R. 53.) This claimed loss was disallowed by the committee on appeals and review of the Bureau of Internal Revenue (R. 56) and by the Commissioner (R. 58), on the ground that there was not a closed and completed transaction in 1918 and on the ground that no loss was actually sustained within the meaning of the statute unless evidenced by a closed and completed transaction.

SPECIFICATION OF ERROR

The Court of Claims erred in holding that the sequestration in 1918 resulted in that year in a sustained loss of the entire investment deductible from gross income for that year and in rendering judgment accordingly.

SUMMARY OF ARGUMENT

The decisions settle the proposition that a transaction does not produce a loss sustained, deductible under the Revenue Acts, until a point is reached where the loss is ascertained. The sequestration by Germany in 1918 of private property of American citizens found within her borders, if operating to divest the owner of title, left him with a claim for

MAR 30 1925

WM. R. STANSBURY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. **291**

THE UNITED STATES, Petitioner,

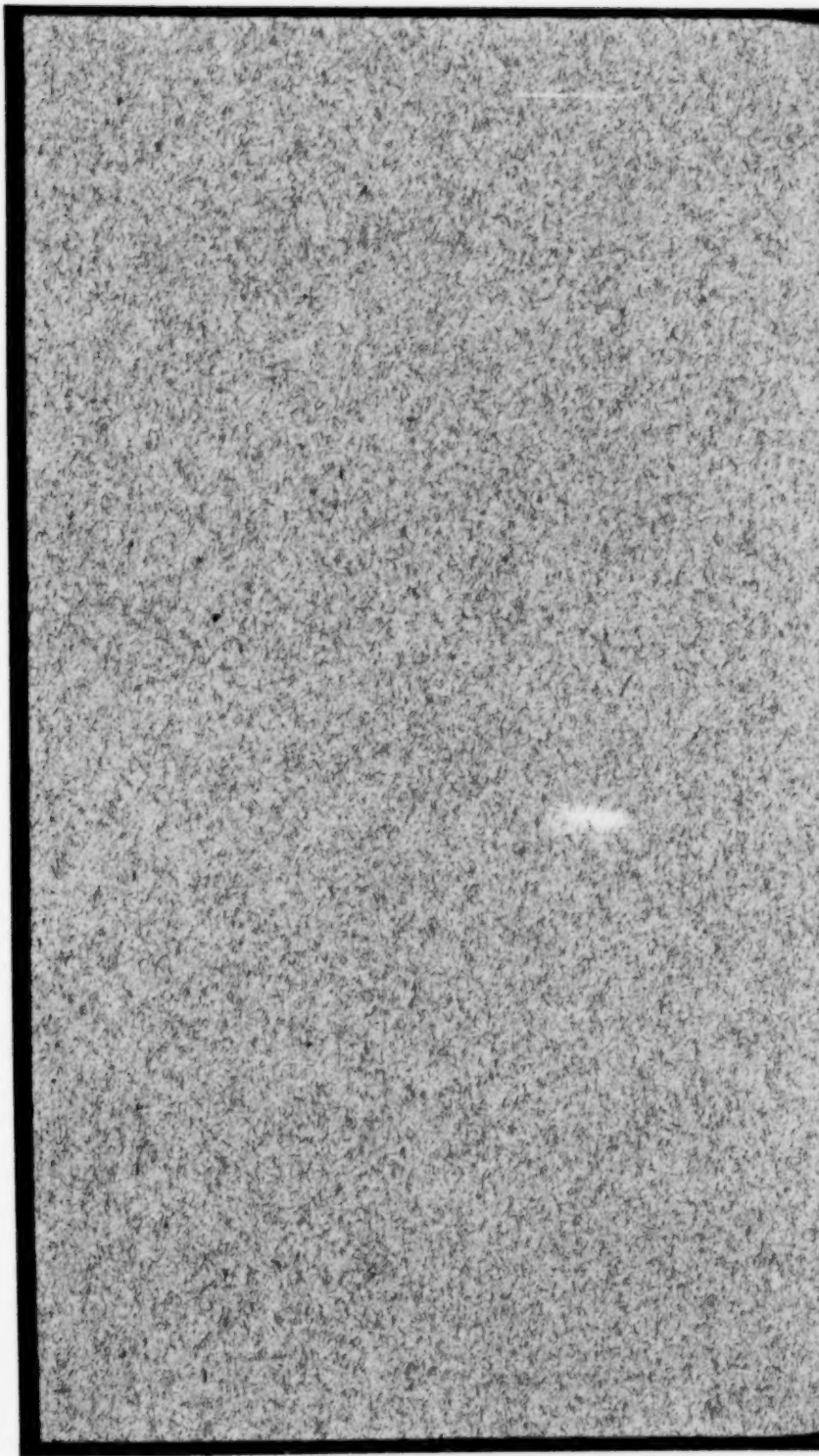
vs.

**THE S. S. WHITE DENTAL MANUFACTURING
COMPANY OF PENNSYLVANIA.**

**BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CLAIMS.**

**JOHN HAMPTON BARNES,
JOHN F. McCARRON,**

Attorneys for Respondent.

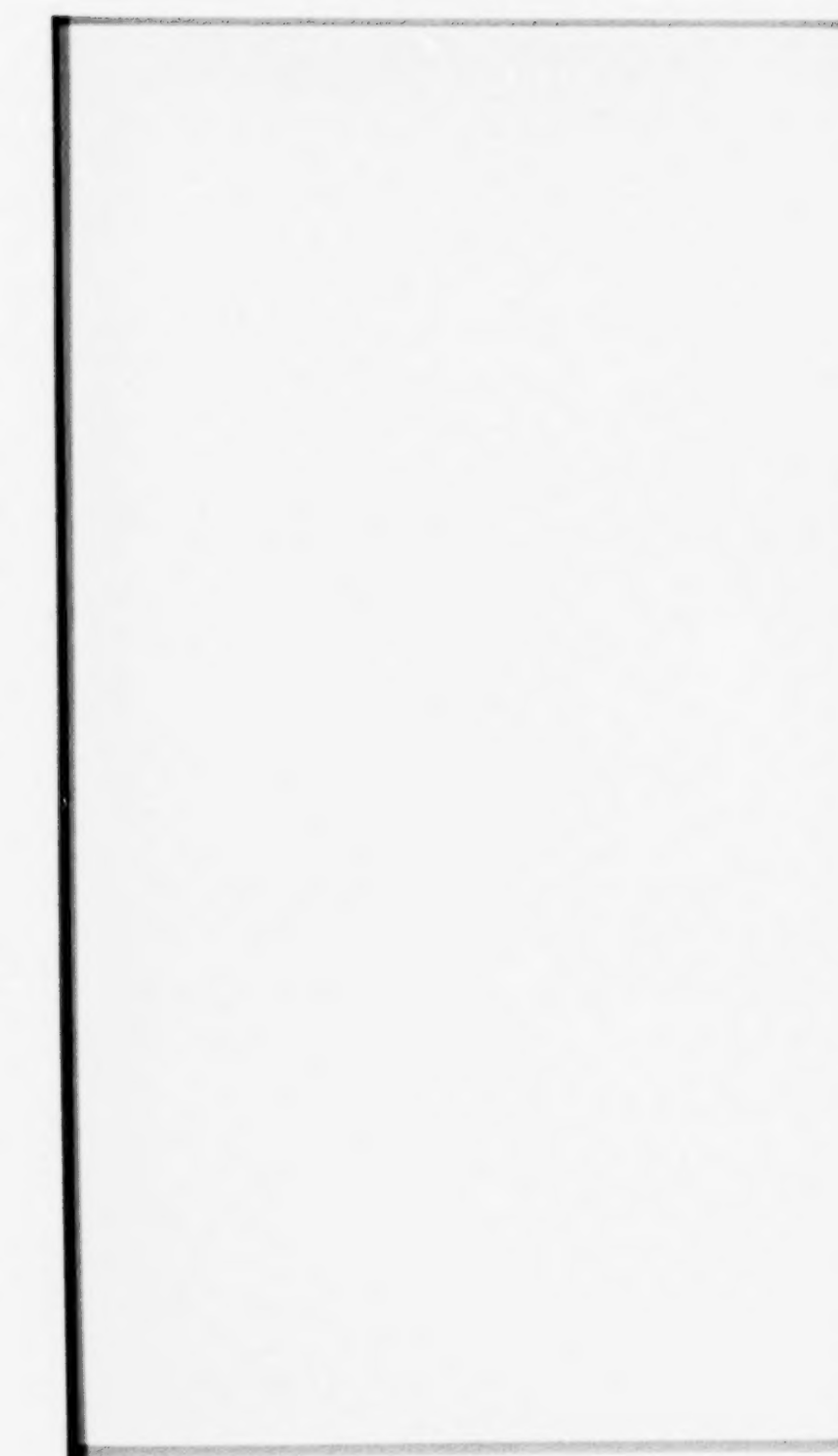


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IN THE
Supreme Court of the United States
OCTOBER TERM, 1925.

No. 957.

THE UNITED STATES, Petitioner,

v.s.

**THE S. S. WHITE DENTAL MANUFACTURING
COMPANY OF PENNSYLVANIA.**

**BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CLAIMS.**

Statement.

The United States is seeking writ of certiorari to review the judgment of the United States Court of Claims in this case and respondent opposes same on the ground that there is no error of law in said judgment, consequently there is no jurisdiction in this Court.

its return or for payment, recognized by established international practice, and before the end of 1918 the defeat of Germany made it reasonably certain that the claim had substantial value. The loss, if any, resulting from the sequestration was not ascertained in 1918, because the amount ultimately to be recovered was not known and the transaction was not completed.

ARGUMENT

I

A DEDUCTIBLE LOSS IS SUSTAINED ONLY WHEN THE LOSS IS REALIZED AS THE RESULT OF A CLOSED AND COMPLETED TRANSACTION

The statute provides for the deduction from gross income of "Losses sustained during the taxable year and not compensated for by insurance or otherwise." (1918 Act, Sec. 234 (a) (4).) That the loss is sustained only when the property is sold or otherwise disposed of and the transaction is closed and completed is the uniform holding of this Court and the other Federal courts. On this point this Court said:

The Company owned many bonds, etc., payable at future dates, purchased at prices above their par values, and to amortize these premiums a fund was set up. It claimed that an addition to this fund should be deducted from gross receipts. The District Court thought the claim well founded, but the Circuit Court of Appeals took another view. Unless the addition amounted to a loss "actually sustained within the year" no

deduction could be made therefor. Obviously, no actual ascertainable loss had occurred. All of the securities might have been sold thereafter above cost. The result of the venture could not be known until they were either sold or paid off.

New York Life Insurance Co. v. Edwards, 271 U. S. 109, 116.

The same point was decided by the Circuit Court of Appeals for the Second Circuit in *New York Life Insurance Company v. Edwards*, 8 F. (2d) 851; also by the Circuit Court of Appeals for the Seventh Circuit in *Fink v. Northwestern Mutual Life Insurance Company*, 267 Fed. 968, 971, and by the United States District Court for the Southern District of New York in *Haviland v. Edwards*, 15 F. (2d) 445.

In the case of *United States v. Flannery*, 268 U. S. 98, this Court held that "gains derived" and "losses sustained" are correlative terms in the Revenue Acts in considering taxable gains and deductible losses. And there have been a number of cases in this and other Federal courts on the question of income or gains realized from transactions in which the same principle was laid down—that there is no income or realized profit by increase in book value before realization by actual sale or other disposition of the property.

In another case this Court said:

Upon this the court held plaintiff to have been properly taxable, and upon nothing more; no income tax being assessable with

respect to the 35 shares still retained, because although they were considered worth more, ex rights, than the \$430 per share found to be their cost, the difference could not be regarded as a taxable profit unless or until realized by actual sale.

Miles v. Safe Deposit & Trust Co., 259 U. S. 247, 250, 251.

The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital.

Gray v. Darlington, 15 Wall. 63, 66.

The United States District Court for Massachusetts also held that increase or decrease of merely book values of bonds was not gain or loss. *Lumber Mutual Fire Insurance Co. v. Malley*, 256 Fed. 383, 384.

And the Circuit Court of Appeals for the Third Circuit held the same. *Baldwin Locomotive Works v. McCoach*, 221 Fed. 59.

That the taxpayer enters on his books an increase or decrease of value is immaterial, as this Court said:

Such books are no more than evidential, being neither indispensable nor conclusive. The decision must rest upon the actual facts, which in the present case are not in dispute.

Doyle v. Mitchell Brothers Co., 247 U. S. 179, 187.

The reenactment, without material change, of this provision by Congress, after the continuous and consistent construction of the provision by the Department, as in this case, and the issuance of the regulations to the same effect, is construed as an adoption by Congress of that construction.

The Corporation Excise Tax Law of August 5, 1909, c. 6, 36 Stat. 11, 113, provided for the deduction of "all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property." This provision has been reenacted without material change in the Revenue Acts of 1913, 1916, 1918, 1921, 1924, and 1926.

The Government, under the Corporation Excise Tax Law of August 5, 1909, and under all of the Income-Tax Acts of 1913 and subsequent years, has consistently construed this provision as it construed it in this case, viz, that in order for a loss to be deductible it must have been realized by sale or other disposition of the property and it must be a closed and completed transaction.

The regulations issued by the Secretary of the Treasury under the authority of the various laws have always been to the same effect.

It was said by this Court:

We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution.

Robertson v. Downing, 127 U. S. 607; *United States v. Healey*, 160 U. S. 136. And we have decided that the reenactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction. *United States v. Falk*, 204 U. S. 143, 152.

Mr. Justice White and Mr. Justice Peckham concur solely because of the prior administrative construction.

United States v. Hermanos y Compania, 209 U. S. 337, 339.

And this Court has stated the law with regard to the effect of Government regulations:

It is settled by many recent decisions of this court that a regulation by a department of government, addressed to and reasonably adapted to the enforcement of an act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with express statutory provision. *United States v. Grimaud*, 220 U. S. 506; *United States v. Birdsell*, 233 U. S. 223, 231; *United States v. Smull*, 236 U. S. 405, 409, 411; *United States v. Morehead*, 243 U. S. 607.

Maryland Casualty Co. v. United States, 251 U. S. 342, 349.

And that the reenactment of the law should be taken as indicating a purpose to continue in force the existing law as interpreted by the Department, this Court said:

We can find in this history no substantial basis for the contention that there was a legislative adoption of any settled administrative construction of the statute adverse to the position now taken by the Government. On the contrary, the enactment of the Revenue Act of 1918 without material change of the provision in question must, we think, be taken as indicating a purpose to continue in force the existing law as interpreted by the Attorney General (*United States v. G. Falk & Bro.*, 204 U. S. 143) * * *.

Provost v. United States, 269 U. S. 443, 458.

See also *United States v. Anderson*, 269 U. S. 422.

It is submitted that it is the established law that under the Internal Revenue Acts a deductible loss is sustained only when the loss is realized by the transaction being closed and completed.

II

NO REALIZED LOSS WAS SUSTAINED BY THE RESPONDENT IN 1918 WITH RESPECT TO THE STOCK OF THE GER- MAN COMPANY

The Court of Claims treated the entire book value of the original investment in the German company, amounting to \$130,764.34, as a loss sustained in 1918, upon, and as the immediate result of, the sequestration in that year. It is perhaps unfortunate that the findings do not disclose proof of the German law governing the sequestration from which the legal effect of the sequestration could be

ing it returned or paid for was too remote for consideration. On this theory the loss of the entire investment was deductible in 1918, and whatever it realized or may realize from assets returned or payment made by Germany is to be considered a windfall, to be treated as income when received.

The position of the United States is that the sequestration did not leave the respondent with nothing. The prospect of return or payment was definite and substantial, and the loss, if any, to result from the sequestration could not be ascertained until the outcome of the claim for return or payment. Certainly if the German corporation was by the act of sequestration completely divested of title and ownership of the property sequestered there was substituted a claim or demand of substantial value. Although the prospect of realizing on that claim may have been dubious in March, 1918, by the end of the tax year December 31, 1918, it was evident that if Germany was financially able to, she would pay. If the value of that claim could have been definitely known in 1918, the loss, if any, might have been then definitely ascertained, but until the amount to be realized from the claim was settled the loss was not ascertained.

While there is something to be said in favor of the proposition that the mere act of sequestration gave the American company the right to charge off and treat as a completed, realized loss the then entire value of the German property, without regard

to the fact that it had a substantial expectation and claim of recovery, the more logical conclusion, and one which accords with the terms of the statute, is that the transaction had not reached a point prior to the award of the Mixed Claims Commission and the sale of the returned assets from which it could be ascertained with any degree of certainty what loss had been or would be sustained.

Respectfully submitted,

WILLIAM D. MITCHELL,
Solicitor General.

HERMAN J. GALLOWAY,
Assistant Attorney General.

A. W. GREGG,
*General Counsel, Bureau of
Internal Revenue.*

FREDERICK W. DEWART,
*Special Attorney, Bureau of
Internal Revenue.
Of Counsel.*

APRIL, 1927.

The Court of Claims on November 9, 1925, entered its judgment in favor of respondent in the amount of \$83,813.59 with interest thereon at the rate of six per cent per annum from November 14, 1923, to the date of the judgment (Rec. p. 68). The sole question for determination by the court in this case is whether any error of law has been made by the Court of Claims in granting judgment to the respondent, as this court is bound by the findings of fact made by the Court of Claims.

The Court of Claims found that under date of May 15, 1924, the Commissioner of Internal Revenue rejected the refund claim of respondent, filed under date of November 24, 1923, for the recovery of the sum of \$83,813.59, paid as taxes by it under protest (Rec. pp. 57, 58).

The respondent's refund claim, rejected by the Commissioner of Internal Revenue, is that the assessment made by the Commissioner and paid by respondent under protest—

“is based upon an erroneous and illegal assessment, as said assessment is based upon Committee on Appeals and Review Recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918 amounting to \$130,764.34 by reason of sequestration of its property ‘The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany,’ by the Imperial German Government be disallowed. This taxpayer contends that it should not have been required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of Septem-

ber 5, 1923, signed by J. G. Bright, Deputy Commissioner, initialed IT:CA:M-2.

CEO-2114-4 A pp. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of Section 234 of the Revenue Act of 1918 and therefore the amount of \$83,813.59 is refundable to it." (Rec. pp. 57, 58.)

Respondent filed its suit in the Court of Claims on July 24, 1924 (Rec. p. 3), a short time after the rejection of its refund claim under date of May 15, 1924 (Rec. p. 58).

It is shown by the findings of fact that respondent made an original and amended income and profits tax return for 1918 to the Commissioner of Internal Revenue in which it deducted in its said amended income and profits tax return the sum of \$130,764.34 for the year 1918, being the value of all the assets of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Company of Pennsylvania in 1918, which is known as respondent's Berlin loss, for the reason that on March 19, 1918, the German sequestrator seized and sequestrated the property of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said Company (Rec. pp. 50, 51).

Respondent, The S. S. White Dental Manufacturing Company of Pennsylvania, was the sole owner of The

S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, at the date of sequestration by the Imperial German Government of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, and at said date of sequestration the amount of the investment of The S. S. White Dental Manufacturing Company of Pennsylvania, as shown by its books, was \$130,764.34 in The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany. On account of said sequestration of its company, The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, the parent corporation, The S. S. White Dental Manufacturing Company of Pennsylvania, charged off its books in the year 1918 the sum of \$130,764.34 appearing on its books as a loss.

The order of sequestration of the German Sequesterator is clear, positive, and sweeping in character and is a very complete document of sequestration and leaves nothing for conjecture. It is:

“Meyers & Co.

Import-Export Commission.

Telephone: Centrum 5110.

Cable Address: Meyers Comp. Wilhelmstr. 42b.
ABC code, 5th edition, used.

Berlin W. 66. Mar. 19, 1918. Wilhelmstr. 42B.

Mr. HERMAN UBERT,

Berlin-Scheneberg, Sponholzstr. 1:

“Hereby I wish to inform you and request you to take note of it that I have been appointed by the Minister of Commerce and Manufactur-

ers as Sequestrator of the concern The S. S. White Dental Manufacturing Company, m. b. h.

"At the same time I wish to inform you hereby that from this day on further purchases in any articles are not allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days, about special matters at once.

"As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

"Yours truly,
(Signed) "EMIL MEYERS,
"In the Firm of Meyers & Co."

Under the above order of sequestration the property seized and sequestrated by the sequestrator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company (Rec. pp. 50, 51).

The Court of Claims also found that:

"The Berlin store is operated by a German corporation formed expressly for such purpose and owned entirely by the taxpayer."

and

"The Berlin business was practically suspended during the years 1917 and 1918 on account of the war, and the seizure of the property by the German Government, as heretofore stated."

The Court of Claims further found that:

“On March 19, 1918, the sequestrator appointed by the German Government took over the taxpayer's property and investment in its branch in Berlin. (Copy of the sequestrator's letter is attached.) This sequestration apparently corresponds to the taking over of the property of enemy aliens in the U. S. by the Alien Property Custodian.

“The investment in the Berlin branch at Dec. 31, 1915, at which time the last authentic report was received, stood as follows:

General investment	\$108,718 08
Capital stock	15,000 00
Furn. & fix	\$7,829 16
Less rept. depr	782 90
	<hr/>
	7,046 26
Total	\$130,764 34”

(Rec. pp. 53, 54.)

Reserves were set up by respondent under date of July 29, 1918, as shown in the findings of the Court of Claims as follows:

“The S. S. White Dental Mfg. Co.

(Extracts from Minutes.)

Stated Meeting, Board of Directors, November 25, 1918. The S. S. White Dental Mfg. Co., m. b. h.

“The president reported he had referred to our counsel the matter of filing claim with the proper department of our Government for the

repayment to us of our loss in connection with this property arising out of its confiscation by the German Government.

• • • • •

“The S. S. White Dental Mfg. Co.

(Extract from Minutes.)

Stated Meeting, Board of Directors, July 29, 1918. The S. S. White Dental Mfg. Co., m. b. h. Berlin.

“Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock	\$15,000 00	
B-28, furniture & fixtures	7,046 26	
B-17 open accounts	\$127,670 75	
Less formerly ad-justed	18,952 67	
	<hr/>	108,718 08
		<hr/>
		130,764 34”

and

“Whereas in 1916 there was charged as a reserve against this amount the sum of \$20,000; and

“Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

“Resolved, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated.”

Respondent insists that the rejection of its said refund claim by the Commissioner of Internal Revenue

on May 15, 1924, is erroneous and unjust and not warranted by law, as this respondent strongly insists that it has conclusively shown to the Commissioner of Internal Revenue that its Berlin loss set forth in its United States income and profits tax return and amended income and profits tax return for the year 1918 was an actual and deductible loss sustained in 1918 and not compensated for by insurance or otherwise in 1918, under subsection 4 of Section 234 of the 1918 Internal Revenue Act, for

“(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise”

are deductible losses.

The confiscation of this respondent's property on March 19, 1918, by the Imperial German Government, the setting up of reserves by the respondent on July 29, 1918, to take care of its Berlin loss occasioned by the said act of confiscation by the Imperial German Government on March 19, 1918, and the writing off by the respondent of its said Berlin loss on its books by this respondent in 1918, which was sustained by it in 1918, as well as deducting its said Berlin loss in its United States income and profits tax return and amended income and profits tax return for 1918, and that its said Berlin loss was not compensated for by insurance or otherwise in 1918, this respondent, by the aforesaid, strongly insists that it has shown a full compliance with subsection 4 of Section 234 of the Internal Revenue Act of 1918 in the deduction of its said Berlin

loss in its United States income and profits tax return and amended income and profits tax return for the year 1918.

The Court of Claims in an unanimous opinion said in part:

“As there is no controversy with respect to the correctness of the amount of tax assessed and collected, the only question for determination is whether or not the plaintiff suffered a deductible loss during the calendar year 1918 within the meaning of the statute above quoted.

“It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918.”

* * * * *

“Losses, which are deductible, it is said, ‘must be evidenced by closed and completed transactions.’ Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.”

(Rec. pp. 67, 68.)

ARGUMENT.

Question for Determination.

The sole question for determination by the court is as to whether any error of law has been made by the Court of Claims in its application of the law to its findings of fact in this case.

Findings of Fact in Nature of Special Verdict.

This court has repeatedly held that the findings of fact made by the Court of Claims are to be treated like the verdict of a jury. Mr. Justice Pitney, in the case of *Brothers vs. United States*, in 250 U. S. 88, said:

“For the purposes of our review the findings of that court are to be treated like the verdict of a jury, and we are not at liberty to refer to the evidence, any more than to the opinion, for the purpose of eking out, controlling, or modifying their scope. *United States v. Smith*, 94 U. S. 214, 218, 24 L. ed. 115; *Stone v. United States*, 164 U. S. 380, 382, 41 L. ed. 477, 478, 17 Sup. Ct. Rep. 71; *District of Columbia v. Barnes*, 197 U. S. 146, 150, 49 L. ed. 699, 700, 25 Sup. Ct. Rep. 401; *Crocker v. United States*, 240 U. S. 74, 78, 60 L. ed. 533, 536, 36 Sup. Ct. Rep. 245, and cases cited.”

It will, therefore, be seen that the findings of fact made by the Court of Claims are binding upon the parties.

Alleged Reasons of Petitioner.

Petitioner states in its petition:

“1. In the view of the petitioner the Court of Claims erred in deciding in effect that the claimant could take a deduction for a loss not evidenced by a closed and completed transaction.”
(Rec. p. 3.)

Respondent states that the Court of Claims did not decide in effect “that the claimant could take a deduction for a loss not evidenced by a closed and completed transaction,” but, on the contrary, the Court very positively stated:

“Losses, which are deductible, it is said, ‘must be evidenced by closed and completed transactions.’ Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.”
(Rec. p. 68.)

In alleged reason two of the petitioner (Rec. p. 3) it doesn't even say the Court of Claims erred about anything, but states:

“2. The Internal Revenue Bureau has always provided in its regulations, which it has consistently carried out, that no loss could be de-

ducted unless it was actually sustained, as evidenced by a closed and completed transaction. There are practically no decisions of the courts on this point.

“The question involved is an important one, as it will affect all taxpayers who had property in Germany seized by that Government and who presented claims to the Mixed Claims Commission. The amount involved is very large even in the narrow field of this class of taxpayers, but the decision may reach all claims for refund based on losses sustained.”

(Rec. p. 3.)

The question for this court is not how

“it will affect all taxpayers who had property in Germany seized by that Government and who presented claims to the Mixed Claims Commission”

but what error of law, if any, is patent on the face of the record in this case. The question herein is one involving the determination of a loss under the taxing statute, and has nothing to do with the presentation of claims to the Mixed Claims Commission.

Sequestered and Confiscated.

The petitioner has attempted to show that “Sequestered and confiscated are not synonymous.” It has set forth a definition from Webster’s Dictionary of the word “sequester” in contemplation of international law, as follows:

“To appropriate under the right of pre-emption.”

With reference to the above definition, the petitioner has evidently overlooked the entire definition of "sequester" as set forth in Webster's New International Dictionary, 1923 edition, at page 1924, where the word "sequester" under international law is defined "*to confiscate or seize and appropriate under the right of pre-emption.*"

It will thus be seen that to "sequester" property in international law is to confiscate it, and this is also stated by the Standard Dictionary, 1923 edition, page 2231.

The definition of "sequester" is also given by the petitioner as:

"The right of belligerents to seize and purchase at an appraised price, contraband other than absolute contraband."

It would appear from Webster's New International Dictionary, 1923 edition, page 1694, that the above definition set forth by the petitioner is the definition of not the word sequestration but "pre-emption" under international law, for "pre-emption" is defined:

"The right of a belligerent to seize and purchase at an appraised price other contraband of war than absolute contraband belonging to a neutral and enroute to the enemy in its own territory or on the high seas or in unappropriated territory."

Petitioner further states that Webster defines the word "confiscate":

"To cause a person to forfeit property to the state."

In addition to the above, Webster's New International Dictionary, 1923 edition, page 470, also defines "confiscate":

"Seized and appropriated by the government to public use; forfeited."

* * * * *

"To seize as forfeited to the public treasury; to appropriate to the public use."

Petitioner states:

"The property sequestered by the German Government in the instant case was taken over by that Government through the sequestration during the period of hostilities and the record does not disclose or indicate that respondent's title to the property was thereby forfeited or that the German Government in any way indicated its nonliability for damage or loss resulting therefrom."

(Brief p. 6.)

From the definitions of sequestration heretofore shown and the actual sequestration of respondent's property in 1918, it is self-evident that the property was a loss in 1918 to respondent, as the Court of Claims found the asset had passed from respondent's title and control, and therefore the reasoning of the petitioner as above set forth is unsound.

The petitioner fails to distinguish between the existence of a loss under the taxing statute and the possibility of a claim before the Mixed Claims Commission, for it states:

"The property was returned to the respondent by the German Government after the cessation of hostilities and, as hereafter shown, the right was possessed by respondent to compensation for the loss sustained on account of such sequestration of its property."

(Brief p. 6.)

The petitioner in the aforesaid states:

"the right was possessed by ~~respondent~~ ^{respondent} to compensation for the loss sustained on account of such sequestration of property."

From this language used by the petitioner it is quite clear that the fact that respondent *had a loss in 1918* under the taxing statute is recognized by the petitioner, and it is difficult to see why a loss thus recognized should not have been deducted by the respondent in its 1918 income and profits tax return, as the Court of Claims has found that respondent was entitled to do.

The petitioner also states:

"It is apparent, therefore, that at the time the respondent's property was sequestered in 1918 it was not definitely known whether or not ultimately there would be a loss, and if so, the amount thereof. * * * The transaction was not closed and completed during the year 1918 and no loss was definitely sustained during the year in which respondent sought to take its deduction."

(Brief p. 6.)

In this statement is an admission that "the respondent's property was sequestered in 1918," but then fol-

lows this remarkable statement: "It was not definitely known whether or not ultimately there would be a loss." The findings of the Court of Claims show that the property was sequestered in 1918, reserves were set up on July 29, 1918, and the then known investment of \$110,764.34 of respondent in the Berlin Corporation was written off the books of the respondent as a loss. This loss was subsequently amended by an addition of \$20,000, to a total of \$130,764.34, as the Internal Revenue Agent restored to respondent's assets the sum of \$20,000 charged off as depreciation in value by The S. S. White Dental Manufacturing Company of Pennsylvania in its 1916 income tax return. It is not, therefore, apparent how such a statement of the petitioner as above set forth can be supported. If the "transaction was not closed or completed during the year 1918," as contended by the petitioner, then how could a loss such as this ever be determined under the taxing statute?

Respondent had a Loss in 1918.

The Court of Claims said in the instant case:

"It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918."

(Rec. p. 68.)

The Supreme Court of Hawaii in 14th Hawaii, 601, Hawaiian Commercial and Sugar Company, Limited, vs. Tax Assessor and Collector in interpreting a statute similar in part to subsection 4 of Section 234 of the 1918 Revenue Law being Section 4 of the Hawaii territory income tax law which reads in part as follows:

"The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders from any fund or account, or carried to the account of any fund or used for construction, enlargement of plants, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation. In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession or occupation or in managing any property, shall be deducted, and also all interest paid by such corporation on existing indebtedness. * * * Also *all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred*: Provided, that no deduction shall be made for any amount paid for new buildings, permanent improvements or betterments made to increase the value of any property or estate."

The court defined a loss under said statute as follows:

"The word 'loss,' and its plural, 'losses,' used in the statute, is not a technical term of art or trade, but a simple word in common use. There is nothing to indicate that these words are used in the statute to express any other than their

ordinary meaning. The dictionary definition of the noun 'loss' is:

“ ‘Failure to hold, keep, or preserve what one has had in possession; deprivation of that which one has had; as the loss of money by gaming; loss of health; of reputation; loss of children; opposed to gain.’ Cent. Dict.

“The central idea in each of these definitions is involuntary parting with a thing. If property is lost it has passed from the control and out of the possession of the loser. No one can lose property and still have it in his possession and be conscious of the fact that he has it.”

The petitioner states:

“While, as pointed out, in the statement of the case (page 1, petition and transcript of record), the Court of Claims in Finding II (R. 51) stated that the investment was charged off the books in 1918, what was meant by Finding II is disclosed in Finding VIII (R. 55), which shows that in 1916 \$20,000 had been set up as a reserve for losses on the investment of \$130,764.34, and it was resolved in 1918 ‘that additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, *until liquidated.*’ (Italics ours.) This seems clearly to indicate that the net value of the investment, as shown on the books, was reduced in 1916, before the seizure, to \$110,000, and it was further reduced, as a result of the seizure, \$60,000 in 1918, and the balance in 1919. This appears to indicate that the company did not regard all the property as *lost* in 1918.”

(Brief p. 7.)

How the above statement can be deduced from the findings of the Court of Claims is not understood. It is very clearly stated in Finding VI (Rec. p. 53):

“Under date of January 15, 1921, Mr. W. W. Tomb, internal revenue agent of the Bureau of Internal Revenue, Treasury Department, submitted a report to the United States Bureau of Internal Revenue of an investigation made by him of the income and profits tax liability of the parent corporation, The S. S. White Dental Manufacturing Co. of Pennsylvania, for the years 1916, 1917, and 1918, and in said report he disallowed the amount which plaintiff contends was the loss sustained by it in 1918 and shown in its original United States income and profits tax return for the year 1918 as \$110,764.34 on account of the amount invested by it in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, which amount is increased to \$130,764.34, as shown by its amended income and profits tax return for 1918, by reason of the fact that said agent, Tomb, restored to the assets the sum of \$20,000 charged off as depreciation in value by The S. S. White Dental Manufacturing Co. of Pennsylvania in its 1916 United States income-tax return.”

(Rec. p. 53.)

The petitioner states:

“it was further reduced, as a result of the seizure, \$60,000 in 1918, and the balance in 1919. This appears to indicate that the company did not regard all the property as lost in 1918.”

Respondent challenges petitioner to show the above anywhere in the findings of the Court of Claims. Find-

ing 17 of the Court of Claims shows that respondent's loss was greater than claimed by it, for it found:

“Item No. 1. Investment in German company as of March 18, 1918, date of sequestration, \$167,033.03, less proceeds of sale of German company, \$6,000 \$161,033.03”
(Rec. p. 58.)

The reason respondent could not make a larger claim is shown by Finding 2:

“deducted as a loss in its said United States income and profits-tax return the sum of \$110,764.34, and in its amended income and profits tax return it deducted \$130,764.34 for the year 1918, made to the said United States Commissioner of Internal Revenue, being the value of all the assets of The S. S. White Dental Manufacturing Co., m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918.”

(Rec. p. 50.)

This court is requested by the petitioner to put aside the findings of the Court of Claims and enter into the realm of speculation and conjecture for it states:

“Finally, the events of 1918, of which the Court may take judicial notice, will further indicate that there was no loss sustained in 1918, Germany was defeated in 1918, *and before the end of that year it was certain that she would be made to return seized American property and*

pay for that part of it lost or damaged, to the extent she was financially able to pay." (Italics ours.)

(Brief p. 7.)

Would not the foregoing show that there were losses? We submit that it would. There is nothing in the Armistice Agreement, the Treaty between the United States and Germany, the Treaty of Versailles, or the agreement creating the Mixed Claims Commission that in anyway deals with the question that as to whether:

"Losses sustained in the taxable year and not compensated for by insurance or otherwise"

are deductible losses. It is solely a question of deductibility of a loss under the Internal Revenue Act of 1918.

Petitioner states:

"Thus in November, 1918, so far as it might be done, it had been provided that the respondent would be compensated. There was therefore no justification for a claimed loss for that year."

(Rec. p. 9.)

The Court of Claims answers the foregoing in its opinion:

"It seems the commissioner loses sight of the fact that the plaintiff will only receive from Germany the sum of \$70,000 and when it will receive that is wholly problematical;"

(Rec. p. 68.)

**“The Meaning of the Word ‘Losses’ as Used in the
Revenue Act of 1918.”**

At the outset, under this heading, we respectfully call to the court’s attention the evident attempt of petitioner to confuse the question of loss with the question of bad debts. The question of bad debts was not an issue in this case, and the question at issue was one of loss.

The petitioner states:

“While the statute does not expressly provide that deductions for losses shall be evidenced by closed and completed transactions, it does in effect so provide with respect to deductions on account of worthless debts, since it provides that debts to be deductible must be ascertained to be worthless and must be charged off within the taxable year, thus constituting a closed and completed transaction.”

(Petition p. 9.)

The question was, When does a loss of property become a loss under the taxing statute?

The petitioner admits that—

“the statute does not expressly provide that deductions for losses shall be evidenced by closed and completed transactions,”

therefore, there can be but one construction of the statute that when an actual loss is sustained *in any taxable year* which is not compensated for by insurance or otherwise *in that year*, it is a deductible loss; unless

it appears that there was compensation then there is no loss—therefore, both loss and failure of compensation must be in the same year.

We are not herein concerned with the provisions of what the statute says or with the rulings of the United States Board of Tax Appeals with respect to charging off bad debts. That question has no place in the discussion of the issues of this case, and for that reason the cases cited in the petitioner's brief on this point, have no bearing upon any issue in the present case.

In the Appeal of Greenville Textile Supply Company, 1., B. T. A. 152, cited by the petitioner, the Board gave scant consideration to the bad debt features of the case and Commissioner Trammell in his opinion, page 154, disposed of it as follows:

“From the facts, it appears that the debts charged off by the taxpayer were in fact not debts ascertained to be worthless during the taxable year.”

Further, the Appeal of Steele Cotton Mill Company, 1., B. T. A. 299, also cited by petitioner, has no relation to the issues of the instant case for the Board found:

“The evidence shows that the debt was incurred July 14, 1920; that a part payment of \$4,000 was made on October 9, 1920; that on December 16, 1920, a conference was had between the directors of the Piedmont Commission Co. and the taxpayer, whereat the taxpayer agreed to accept promissory notes, indorsed by the individual directors, in the amount of \$18,712.68 in full settlement of its claim; that the notes

were not delivered on the day following the conference; that between December 16 and December 31, 1920, the taxpayer made two demands for delivery of the notes but received no reply; that on December 31, 1920, it charged off the full amount of the debt as worthless. It also shows that the taxpayer made no endeavor to ascertain the actual assets of the Piedmont Commission Co.; that the men who composed the directorate of the company were men of high integrity, financial responsibility, and prominence in business in North Carolina, and that they did not desire the company forced into bankruptcy; that the taxpayer did not seek out or confer with any of the directors to ascertain whether or not the promised note would be delivered or what was the cause of the delay in delivery. A summing up of these facts shows that the taxpayer reached its conclusion as to the worthlessness of the debts upon the facts that the notes were not delivered within 14 days after the conference with the directors and that it had received no reply to one letter and one telegram sent some time after December 17, 1920. Before a taxpayer is entitled to take a deduction for a 'debt ascertained to be worthless,' he must take reasonable steps to determine that there is no probability of payment or collection and have *prima facie* evidence to prove that the debt has no value. Under the facts shown in this appeal, the time was too limited and the endeavor too restricted for us to consider that the taxpayer had thoroughly investigated the resources of the Piedmont Commission Co. or that sufficient effort had been made to make sure that the compromise agreement would not be fulfilled or that the company

could not or would not pay. This taxpayer has not made a showing which would entitle it to consideration under this test, and its first contention must be denied."

The Appeal of C. S. Webb, Inc., I. B. T. A. 269, referred to by petitioner, has nothing to do with the issues of the instant case. The Board in its opinion stated:

"The first question involved in this appeal is whether the taxpayer was entitled to deduct the amount of \$37,926.75 from its income for the year ended June 30, 1919, as a bad debt ascertained to be worthless and written off its books in the year in question. It is the opinion of the Board that the taxpayer has failed to show that any serious effort was ever made to collect the amount in controversy. On the contrary, it is admitted that C. S. Webb, Inc., decided, for business reasons that seemed good to its stockholders, that it would not attempt to secure collection from C. S. Webb and his two associates and that it would absorb the entire loss.

"The Board is of the opinion that the loss claimed by the taxpayer as a deduction from its income for the year ended June 30, 1919, could have been collected. C. S. Webb owned 50 per centum of the capital stock of the taxpayer, which was so prosperous during the year in question that it earned a net income of \$102,907.75 on a capital investment of \$200,331.04. It is reasonably certain that the whole debt could have been collected from C. S. Webb. The other two parties to the Hartzog transaction were business men of South Carolina, and each of them was an officer of a cotton mill. It may be

that neither C. S. Webb nor either of his partners in the Hartzog transaction was able to pay all or even his proper share of the loss that is claimed by the taxpayer as a bad debt, but no evidence to that effect was adduced at the hearing before the Board."

In the Appeal of Alemite Die Casting and Manufacturing Company, I. B. T. A. 548, cited by petitioner, the Board said in part:

"Sec. 234 (a) (5) of the Revenue Act of 1918 contemplates that before a taxpayer can charge a debt off and deduct it from gross income it must be determined to be worthless. That determination must be based upon facts. We are of the opinion that the evidence is not sufficient to establish worthlessness. The debts appear to have been charged off because a lawyer thought that collection thereof was doubtful, but the facts to justify such opinion are not before us. The only evidence before us as to the debt of the National Projector and Film Corporation is that counsel made an investigation, the nature of which is not disclosed by the evidence, which led him to believe the debtor insolvent and collection doubtful. There is no evidence that taxpayer had any information as to the assets of the debtor or as to whether the account would or would not be paid."

This case also has nothing to do with the issues of this case. The Board in the Appeal of Harry Gottlieb, I. B. T. A. 674, also cited by petitioner, said:

"It does not appear whether the taxpayer claimed the deduction in dispute in his original

return for 1920 or only in a report compiled in 1923 after audit by a field agent had demonstrated the necessity of a complete reconstruction of his accounts.

“Without going into the question whether a taxpayer may regard a debt as worthless for tax purposes and be allowed a deduction therefor at the same time that he continues to regard it as an asset for the purpose of obtaining credit and otherwise utilizing it in his business, it is sufficient for us to say that the testimony adduced on behalf of the taxpayer was so indefinite in many respects and to such an extent in conflict with exhibits filed, both on his own behalf and by the Commissioner, that it failed to convince us that he did in good faith ascertain the debts to be worthless during 1920. With respect to one of them, an affidavit filed by him in proceedings before the Commissioner admits that he collected a substantial proportion in October, 1922, although from his testimony before us it would appear that he desired to give us the impression that he had never received anything on account of it. He presented as an exhibit for the purpose of showing that he had not filed a claim in bankruptcy against this debtor a list of claims proven, upon which his name does not appear, but the certificate of the clerk of the bankruptcy court annexed thereto shows that it is only a copy of the second page of the schedule of distribution. Another similar schedule of distribution offered proved to be likewise fragmentary.

“In all the circumstances we feel that the taxpayer has not proven his case and that the determination of the Commissioner must be allowed to stand.”

The petitioner further attempts to write into the taxing statute that which is not to be found there, as follows:

“Thus, where a taxpayer involuntarily parts with the possession of physical or tangible property, and in the ordinary sense has sustained a loss of that property, but concurrently therewith a claim arises in favor of the taxpayer for compensation therefor, and a reasonable expectancy exists for the recovery of such compensation, then a deductible loss under the Revenue Act has not occurred, for the reason that the transaction is in effect only a conversion of a tangible asset into an intangible asset, and the taxpayer’s net worth remains the same.”

(Brief p. 11.)

No concurrent claim for compensation arose in 1918, for there was no sovereignty against which such a claim could then have been presented, and no method then existed for presenting such a claim even if there had been a responsible sovereignty.

And the petitioner further states:

“If thereafter it be determined that the claim for compensation has become worthless, as through the insolvency of the debtor or by arbitrary refusal of a sovereign government to make restitution or allow compensation, or the claim is otherwise determined to be uncollectible, a deductible loss would thereupon and at that time be sustained by the taxpayer with respect to such claim or intangible asset.”

(Brief pp. 11-12.)

This conclusion is based on occurrences long subsequent to 1918. The question must be limited to the facts in 1918, as they are admitted and found by the court, and it will be observed that not one authority is cited by the petitioner for the above statement. In view of this reasoning, we ask what becomes of subsection 4 of Section 234 of the 1918 Revenue Act? What would happen to the loss of a claimant if compensation did not occur until after the five-year limitation in the 1918 Act had expired? In other words, the petitioner ignores the provisions of Section 252 of the 1918 Act as follows:

“Sec. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled ‘An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,’ the Act of October 3, 1913, entitled ‘An act to reduce tariff duties and to provide revenue for the Government, and for other purposes,’ the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war profits or excess-profits tax has been paid in excess of that **properly due** then notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided, That no such credit or refund shall be allowed or made after five years from the date*

when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer." (Italics ours.)

It is plain that such a claim would be barred by the statute of limitations. Losses under the statute of 1918 must be deducted in the year sustained unless compensated for by insurance or otherwise in that year and not upon the theory of the petitioner, based upon conditions not then, in 1918, existing and in no way capable of anticipation.

Why the Distinction Between the Time when a "Loss" is "Sustained" and the Ascertainment or Determination of the Amount of Such Loss?

The petitioner states:

"Section 234 (a) (4) of the Revenue Act of 1918 provides that, in computing the net income of a corporation, there shall be allowed as deduction 'losses sustained during the taxable year and not compensated for by insurance or otherwise.' In the instant case respondent seeks to construe the provision above quoted as meaning that the loss must be compensated for during the taxable year in order to prevent its being deductible, thus in effect making the provision in question read 'losses sustained during the taxable year and not compensated for during the taxable year by insurance or otherwise.'"

(Brief p. 12.)

The above is a correct statement of respondent's interpretation of the Act. The petitioner, however,

endeavors to evade the law on a theory and not upon the facts as known, saying:

"The vice of such a construction is at once apparent upon consideration of the results which would flow therefrom. Such a construction would inevitably lead to unjust discrimination and the unequal assessment and collection of taxes in the cases of taxpayers similarly situated with respect to losses sustained during the same taxable year. For example, if A sustained a loss by fire during the month of December, 1918, such loss being compensated by insurance, if the compensation was received by A before the expiration of the year 1918, clearly no deductible loss would be sustained. If B sustained a loss by fire at the same time and under the same circumstances, but his loss was not compensated by insurance during the taxable year, although a claim in his favor may have arisen at the time, he would be entitled, under the construction of the statute urged by respondent, to deduct the amount of such losses and thereafter treat the compensation as taxable income for the year in which received. If such compensation was so received by B after Congress had provided lower rates of taxation in the Revenue Act of 1921, or the Revenue Act of 1924, this would result in the payment of a proportionately less tax by B than by A, notwithstanding the only difference with respect to their losses was the fact that A received compensation for his loss during the taxable year 1918, whereas B received compensation for his loss in a subsequent year. This in effect is the result sought by respondent in its action herein. Clearly such was not the intent of Congress.

Further, it is confidently asserted that the language used in the statute does not require, and indeed will not permit, such a construction to be placed thereon."

(Brief pp. 12, 13.)

We respectfully submit, in answer to the above, that the construction placed by respondent on the statute in question and set forth in its brief is in line with the intent of Congress and follows the statute. Moreover, if no claim can be made until the amount of the loss is finally ascertained, as contended by petitioner, Congress might in the meantime raise the tax, which would result in the payment of a higher tax by B than A in the example given by the petitioner. Thus the same inequitable result, as between A and B, might flow from the petitioner's interpretation of the taxing statute.

Again we find this strange reasoning of the petitioner:

"The Revenue Act of 1918 imposes no duty upon the taxpayer to determine the loss and charge same off his books during the taxable year as in the case of a bad debt, or to set up reserves to liquidate it, in order to constitute a deductible loss."
(Brief p. 14.)

The Revenue Act of 1918, it will be observed, imposes upon the taxpayer the important duty of correctly determining its true net income under that Act, and in doing that the law provides:

"(a) That in computing the net income of a corporation subject to the tax imposed by Section 230 there shall be allowed as deductions:
• • •

“(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise.”

(Rec. p. 67.)

Respondent had a loss in 1918, as is conclusively shown in the findings of the court and it was therefore incumbent upon respondent to charge it off its books in 1918 to determine its true net income for that year.

Again petitioner says:

“but if the amount of such loss is definitely ascertainable by any reasonable method of computation and it *appears to be a final loss*, not compensated by insurance or otherwise, the taxpayer sustained the loss during the year 1918. He is therefore entitled to deduct such loss from his taxable income for that year.” (Italics ours.)

(Brief p. 14.)

There is nothing in the Revenue Act of 1918 as to a “final loss”? There is no such term in the law. The Act says “losses,” and “not final loss.” The use of the term “final loss” is a pure invention, unless it means a loss sustained in a taxable year and not compensated for by insurance or otherwise; in this sense we accept it; the loss was final in 1918 and, being thus ascertained, was deductible.

Petitioner further states:

“In the instant case the facts, as found, show that respondent did not sustain a loss during the year 1918 by reason of the sequestration of the property of the Berlin Company by the German Government, not compensated by in-

surance or otherwise, and evidenced by a closed and completed transaction. On the contrary, the facts show that, concurrently with the sequestration of the property of its Berlin Company, a claim arose in favor of respondent against the German Government *for any loss* resulting therefrom.” (Italics ours.)

(Brief pp. 14, 15.)

We shall answer the two propositions separately. To the first statement that—

“In the instant case the facts, as found, show that respondent did not sustain a loss during the year 1918 by reason of the sequestration of the property of the Berlin Company by the German Government, not compensated by insurance or otherwise, and evidenced by a closed and completed transaction.”

(Brief pp. 14, 15.)

we unhesitatingly say that the findings of the court show a loss by respondent by reason of the sequestration of its Berlin Corporation in 1918, and we have heretofore pointed out wherein the court shows respondent did suffer a loss. The property of this respondent was sequestered on March 19, 1918; it was not compensated for by insurance or otherwise during that year, and was written off the books of respondent in 1918 and, so far as the year 1918 is concerned, it was a closed and completed transaction.

As to the second proposition of the petitioner that:

“On the contrary, the facts show that, concurrently with the sequestration of the property of its Berlin Company, a claim arose in favor

of respondent against the German Government for any loss resulting therefrom."

(Brief pp. 14, 15.)

We deny this assertion; we have already discussed it. Did a "*claim*" arise "in favor of respondent against the German Government *for any loss* resulting therefrom" if, as petitioner insists, "respondent did not *sustain a loss* during the year 1918 by reason of the sequestration of the property"? Petitioner admits that "concurrently with the sequestration of the property" * * * "a claim arose" "for any loss," therefore petitioner admits that respondent had a *loss* in 1918 by the sequestration of its property by Germany.

Again the petitioner states:

"that the property sequestered in 1918 was returned to respondent by the German Government in 1920, a part of which property it sold in 1922 for the sum of \$6,000.00; that in 1923 respondent presented to the Mixed Claims Commission on account of its said loss a claim against Germany for the sum of \$368,333.32, which was subsequently allowed by the Mixed Claims Commission in the sum of \$70,000.00."

(Brief p. 15.)

Let us analyze the above statement in the light of the findings of the court. Paragraph seventeen of the findings of the court contains the following:

"Item No. 1. Investment in German company as of March 18, 1918, date of sequestration, \$167,033.03, less proceeds of sale of German company, \$6,000, \$161,033.03."

(Rec. p. 58.)

Paragraph eighteen of the findings of the court contains the following:

“Item No. 1. This item of \$161,033.03 represents the value of the physical assets of the German corporation as of March 18, 1918, the date of sequestration as shown by certified reports from the German company and reconciled with the books and records of the American company, less the sum of \$6,000 salvage from the sale of the German company in February, 1922. It consisted of:

Cash	\$60,565 80
Accounts receivable	50,739 75
Bills receivable	6,485 46
Furniture and fixtures	5,709 59
Merchandise inv.	47,910 69
Expenditures made by American Co. for German Co. not on Ger- man Co.'s books	914 49
	<hr/>
	\$172,325 78
Less accounts payable	5,292 75
	<hr/>
	\$167,033 03
Less salvage of German Co.	6,000 00
	<hr/>
	\$161,033 03”
	(Rec. p. 62.)

This sale of what remained of its property for \$6,000 is contained in paragraph eighteen of the findings of the court.

Again the petitioner states:

“It is apparent, therefore that the act of sequestration in and of itself did not result in any loss to respondent during the year 1918, but merely resulted in the conversion of mixed assets (tangible and intangible) into an intangible asset.” (Brief p. 15.)

If the act of sequestration resulted in the conversion of mixed assets (tangible and intangible) into an “intangible asset,” then surely respondent had a loss, for Webster’s New International Dictionary, 1923 edition, page 1121, defines “intangible” “Not tangible; incapable of being touched or perceived by touch.” Respondent surely was incapable after March, 1918, of touching, handling, or dealing with its property which had been taken from it in 1918 which the petitioner states was an intangible asset. There was no condition such as petitioner states, for the findings of the court show that the property of respondent was *confiscated* by the sequestration in 1918. No allocation of any part of the award obtained from the Mixed Claims Commission can ever be made to items covered by the present claim for the reason that no statement as to the basis of the award was ever made. If the award is paid it will become taxable and will be returned as income for the year in which it is paid.

Again we vigorously dissent from the contention of the petitioner in its statement:

“It may be further stated that the facts show that respondent has not yet sustained any deductible loss by reason of said sequestration,

and if the claim allowed in its favor by the Mixed Claims Commission is ultimately paid, no deductible loss will be sustained, since the Mixed Claims Commission has in effect determined that the sum of \$70,000.00, with the interest specified, will compensate respondent for its loss resulting from said sequestration."

(Brief p. 15.)

The findings of the court, show that respondent sustained a deductible loss by reason of the sequestration of its property in 1918. What the Mixed Claims Commission did in the claim filed with it has nothing to do with respondent's loss in 1918 under the taxing statute. The fact remains that respondent has not been paid anything for its loss deducted in its income and profits tax returns in 1918 either through the Mixed Claims Commission or any other source.

The Question of the Re-enactment of Statute.

The petitioner has set up the section of the 1916 law and regulations thereunder and the various parts of the Revenue Acts of 1918, 1921, and 1924 regarding losses and the regulations relating to same. Suffice to say that respondent has fully complied with subsection 4 of Section 234 of the 1918 Revenue Act and deducted its loss sustained by it in 1918, as it was not compensated for by insurance or otherwise in 1918, and it also charged its loss off its books in 1918. This court needs no light upon the question of construing internal revenue statutes, and especially with reference to the construction to be given subsection 4 of Section

234 of the 1918 law; there should be no difficulty in arriving at the intent of Congress, as the language of the statute is plain and there is no ambiguity in it. Particular construction which never came to the attention of Congress in the re-enactment of statutes containing the same language is of no significance.

Conclusion.

Respondent respectfully submits that it has heretofore shown that the petition for writ of certiorari shows no error of law by the court below, and that therefore, this court is without jurisdiction to grant the writ of certiorari. It is respectfully requested that on the findings and opinion of the court below and the reasons set forth in this brief that the petition for writ of certiorari to the Court of Claims be denied.

Very respectfully,

JOHN HAMPTON BARNES,
JOHN F. McCARRON,
Attorneys for Respondent.

FILED

APR 14 1927

WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 291.

THE UNITED STATES, Petitioner,

vs.

**THE S. S. WHITE DENTAL MANUFACTURING
COMPANY OF PENNSYLVANIA.**

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS,

BRIEF FOR RESPONDENT.

**JOHN HAMPTON BARNES,
JOHN F. McCARRON,**

Attorneys for Respondent.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1926.

No. 291.

THE UNITED STATES, PETITIONER,

vs.

THE S. S. WHITE DENTAL MANUFACTURING
COMPANY OF PENNSYLVANIA.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

BRIEF FOR RESPONDENT.

Counter Statement of Question Involved.

Did the respondent sustain a deductible loss from its gross income during the year 1918 under the provisions of the Revenue Act of 1918 by reason of the sequestration of its property by the German Government?

Statement.

The Court of Claims on November 9, 1925, entered its judgment in favor of respondent in the amount of \$83,813.59 with interest thereon at the rate of six per cent per annum from November 14, 1923, to the date of the judgment (Rec. p. 69). The sole question for determination by the court in this case is whether any error of law has been made by the Court of Claims in granting judgment to the respondent, as this Court is bound by the findings of fact made by the Court of Claims.

The Court of Claims found that under date of May 15, 1924, the Commissioner of Internal Revenue rejected the refund claim of respondent, filed under date of November 24, 1923, for the recovery of the sum of \$83,813.59, paid as taxes by it under protest (Rec. pp. 57, 58).

The respondent's refund claim, rejected by the Commissioner of Internal Revenue, is that the assessment made by the Commissioner and paid by respondent under protest—

“is based upon an erroneous and illegal assessment, as said assessment is based upon Committee on Appeals and Review Recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918 amounting to \$130,764.34 by reason of sequestration of its property ‘The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany,’ by the Imperial German Government

be disallowed. This taxpayer contends that it should not have been required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of September 5, 1923, signed by J. G. Bright, Deputy Commissioner, initialed IT:CA:M-2.

CEO-2114-4 A pp. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of Section 234 of the Revenue Act of 1918 and therefore the amount of \$83,813.59 is refundable to it." (Rec. pp. 57, 58.)

Respondent filed its suit in the Court of Claims on July 24, 1924 (Rec. p. 3), a short time after the rejection of its refund claim under date of May 15, 1924 (Rec. p. 58).

It is shown by the findings of fact that respondent made an original and amended income and profits-tax return for 1918 to the Commissioner of Internal Revenue in which it deducted in its said amended income and profits-tax return the sum of \$130,764.34 for the year 1918, being the value of all the assets of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Company of Pennsylvania in 1918, which is known as respondent's Berlin loss, for the reason that on March 19, 1918, the German sequestrator seized and sequestrated the property of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which consisted of fixtures, cash, book accounts, merchandise

stock, and accounts due and owing the said Company (Rec. pp. 50, 51).

Respondent, The S. S. White Dental Manufacturing Company of Pennsylvania, was the sole owner of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, at the date of sequestration by the Imperial German Government of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, and at said date of sequestration the amount of the investment of The S. S. White Dental Manufacturing Company of Pennsylvania, as shown by its books, was \$130,764.34 in The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany. On account of said sequestration of its company, The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, the parent corporation, The S. S. White Dental Manufacturing Company of Pennsylvania, charged off its books in the year 1918 the sum of \$130,764.34 appearing on its books as a loss.

The order of sequestration of the German Sequesteror is clear, positive, and sweeping in character and is a very complete document of sequestration and leaves nothing for conjecture. It is:

“Meyers & Co.

Import-Export Commission.

Telephone: Centrum 5110.

Cable Address: Meyers Comp. Wilhelmstr. 42b.
ABC code, 5th edition, used.

Berlin W. 66. Mar. 19, 1918. Wilhelmstr. 42B.

Mr. HERMAN UBERT,
Berlin-Scheneberg, Sponholzstr. 1:

“Hereby I wish to inform you and request you to take note of it that I have been appointed by the Minister of Commerce and Manufacturers as Sequestrator of the concern The S. S. White Dental Manufacturing Company, m. b. h.

“At the same time I wish to inform you hereby that from this day on further purchases in any articles are not allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days, about special matters at once.

“As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

“Yours truly,

(Signed) “EMIL MEYERS,

“*In the Firm of Meyers & Co.*”

Under the above order of sequestration the property seized and sequestrated by the sequestrator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company (Rec. pp. 50, 51).

The Court of Claims also found that :

“The Berlin store is operated by a German corporation formed expressly for such purpose and owned entirely by the taxpayer.”

and

“The Berlin business was practically suspended during the years 1917 and 1918 on account of the war, and the seizure of the property by the German Government, as heretofore stated.”

The Court of Claims further found that :

“On March 19, 1918, the sequestrator appointed by the German Government took over the taxpayer's property and investment in its branch in Berlin. (Copy of the sequestrator's letter is attached.) This sequestration apparently corresponds to the taking over of the property of enemy aliens in the U. S. by the Alien Property Custodian.

“The investment in the Berlin branch at Dec. 31, 1915, at which time the last authentic report was received, stood as follows :

General investment	\$108,718.08
Capital stock	15,000.00
Furn. & fix	\$7,829.16
Less rept. depr	782.90
	<hr/>
	7,046.26
Total	<hr/>
	\$130,764.34”

(Rec. pp. 53, 54.)

Reserves were set up by respondent under date of July 29, 1918, as shown in the findings of the Court of Claims as follows:

“The S. S. White Dental Mfg. Co.

(Extracts from Minutes.)

Stated Meeting, Board of Directors, November 25, 1918. The S. S. White Dental Mfg. Co., m. b. h.

“The president reported he had referred to our counsel the matter of filing claim with the proper department of our Government for the repayment to us of our loss in connection with this property arising out of its confiscation by the German Government.

* * * * *

“The S. S. White Dental Mfg. Co.

(Extracts from Minutes.)

Stated Meeting, Board of Directors, July 29, 1918. The S. S. White Dental Mfg. Co., m. b. h. Berlin.

“Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock.....	\$15,000.00
B-28, furniture & fixtures.....	7,046.26
B-17, open accounts..	\$127,670.75
Less formerly ad-	
justed	18,952.67
	<hr/>
	108,718.08
	<hr/>
	130,764.34”

and

“Whereas in 1916 there was charged as a reserve against this amount the sum of \$20,000; and

“Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

“Resolved, That additional reserves be set up on the following basis, viz, \$15,000 quarterly, beginning March, 1918, until liquidated.”

(Rec. pp. 54, 55.)

The Court of Claims in an unanimous opinion said in part:

“As there is no controversy with respect to the correctness of the amount of tax assessed and collected, the only question for determination is whether or not the plaintiff suffered a deductible loss during the calendar year 1918 within the meaning of the statute above quoted.

“It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918.”

* * * * *

“Losses, which are deductible, it is said, ‘must be evidenced by closed and completed transactions.’ Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned.

That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.”
(Rec. pp. 67, 68.)

ARGUMENT.

Question for Determination.

Did the respondent sustain a deductible loss from its gross income during the year 1918 under the provisions of the Revenue Act of 1918—by reason of the sequestration of its property by the German Government?

Findings of Fact in Nature of Special Verdict.

This Court has repeatedly held that the findings of fact made by the Court of Claims are to be treated like the verdict of a jury. Mr. Justice Pitney, in the case of *Brothers vs. United States*, in 250 U. S. 88, said:

“For the purposes of our review the findings of that court are to be treated like the verdict of a jury, and we are not at liberty to refer to the evidence, any more than to the opinion, for the purpose of eking out, controlling, or modifying their scope. *United States v. Smith*, 94 U. S. 214, 218, 24 L. ed. 115; *Stone v. United States*, 164 U. S. 380, 382, 41 L. ed. 477, 478, 17 Sup. Ct. Rep. 71; *District of Columbia v. Barnes*, 197 U.

S. 146, 150, 49 L. ed. 699, 700, 25 Sup. Ct. Rep. 401; Crocker v. United States, 240 U. S. 74, 78, 60 L. ed. 533, 536, 36 Sup. Ct. Rep. 245, and cases cited."

It will, therefore, be seen that the findings of fact made by the Court of Claims are binding upon the parties.

Petitioner's Alleged Specification of Error.

The Specification of Error in the brief filed by the United States (Petitioner's Brief, p. 9) limits the question before the court to an assertion that the loss caused by the sequestration was not sustained by the respondent in the year 1918 and was not of its entire investment. It by implication admits that the sequestration is a taking of the entire property of the respondent, and that it did result in a loss.

The facts as found by the Court of Claims show that the loss did occur in 1918 and that it was of the entire investment of the respondent. The Court of Claims said:

"The plaintiff's property was sequestered in 1918; the loss suffered thereby was charged off the books of the plaintiff as a loss in 1918; the plaintiff deducted its loss in its income and excess profits tax return for 1918, the year in which it was sustained."

* * * * *

"It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the

property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918." (Record, pp. 67, 68.)

In spite of the aforesaid it is argued on behalf of the petitioner that:

"The sequestration by Germany in 1918 of private property of American citizens found within her borders, if operating to divest the owner of title, left him with a claim for its return or for payment, recognized by established international practice, and before the end of 1918 the defeat of Germany made it reasonably certain that the claim had substantial value. The loss, if any, resulting from the sequestration was not ascertained in 1918, because the amount ultimately to be recovered was not known and the transaction was not completed." (Petitioner's brief, pp. 9, 10.)

The Court of Claims, in its opinion, answers the foregoing.

"The plaintiff was the sole owner of The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, at the date of the sequestration by the Imperial German Government of the property aforesaid, and at said date the amount of the investment of the plaintiff in its German property, as shown by its books, was \$130,764.34. On account of this sequestration of its property the plaintiff charged off its books in the year 1918 the said sum of \$130,764.34, which sum appeared on its books as a loss. The effect of the seques-

tration of plaintiff's property was to destroy and to cause a loss to the plaintiff, which was absolute in 1918."

* * * * *

"The loss sustained by the plaintiff was in our opinion a loss deductible during the calendar year 1918 within the meaning of the statute. Because the plaintiff has a claim which may or may not be paid does not alter the fact that it suffered this loss in the year 1918 and has continued to suffer it down to the present time. The Government cannot continue indefinitely to hold its taxpayers to account upon the idea that something may happen in the future which will change existing conditions" (Record, pp. 66, 68).

The Question of the Re-enactment of Statute.

The petitioner contends that "A deductible loss is sustained only when the loss is realized as the result of a closed and completed transaction." The petitioner has set up Section 234, paragraph 4, of the Revenue Act of 1918 regarding losses and Articles 141 and 144 of Treasury Regulations 45. Suffice to say, that respondent has fully complied with subsection 4 of Section 234 of the 1918 Revenue Act and deducted its loss sustained by it in 1918, as it was not compensated for by insurance or otherwise in 1918, and it also charged its loss off its books in 1918. This court needs no light upon the question of construing internal revenue statutes, and especially with reference to the construction to be given subsection 4 of Section 234 of the 1918 law; there should be no difficulty in arriving at the intent of

Congress, as the language of the statute is plain and there is no ambiguity in it. Particular construction which never came to the attention of Congress in the re-enactment of statutes containing the same language is of no significance.

The petitioner contends that:

"It is submitted that it is the established law that under the Internal Revenue Acts a deductible loss is sustained only when the loss is realized by the transaction being closed and completed." (Record, p. 33.)

The Court of Claims said in its opinion, based upon its findings of fact, which findings are based upon a stipulation of the facts between the petitioner and respondent (Record, p. 49), that in the instant case:

"The loss was complete for the year 1918; it could be and was determined; the transaction for that year was closed and completed. The loss has continued down to the present time with the exception of \$6,000 salvaged from the property in 1921." (Record, p. 68.)

The Supreme Court of Hawaii in 14th Hawaii, 402, Hawaiian Commercial and Sugar Company, Limited, *vs.* Tax Assessor and Collector, in interpreting a statute similar in part to subsection 4 of Section 234 of the 1918 Revenue Law, being Section 4 of the Hawaii territory income tax law, which reads in part as follows:

"The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders

from any fund or account, or carried to the account of any fund or used for construction, enlargement of plants, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation. In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession or occupation or in managing any property, shall be deducted, and also all interest paid by such corporation on existing indebtedness. * * * *Also all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred; Provided, that no deduction shall be made for any amount paid for new buildings, permanent improvements or betterments made to increase the value of any property or estate."*

The court defined a loss under said statute as follows:

"The word 'loss,' and its plural, 'losses,' used in the statute, is not a technical term of art or trade, but a simple word in common use. There is nothing to indicate that those words are used in the statute to express any other than their ordinary meaning. The dictionary definition of the word 'loss' is:

"'Failure to hold, keep, or preserve what one has had in possession; deprivation of that which one has had; as the loss of money by gaming; loss of health; of reputation; loss of children; opposed to gain.' *Crest. Dict.*

"The central idea in each of these definitions is involuntary parting with a thing. If property

is lost it has passed from the control and out of the possession of the loser. No one can lose property and still have it in his possession and be conscious of the fact that he has it."

Respondent Had a Loss in 1918.

Petitioner in its brief states:

"The Court of Claims treated the entire book value of the original investment in the German company, amounting to \$130,764.34, as a loss sustained in 1918 upon, and as the immediate result of, the sequestration in that year."

(Brief, p. 15.)

The petitioner should also have stated that the Court of Claims found that:

"The property seized and sequestered by the sequestrator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company. Because of the aforesaid sequestration of property, which belonged to The S. S. White Dental Manufacturing Co., M. b. h., of Berlin, Germany, the amount of \$130,764.34 was charged off the books of the parent corporation, The S. S. White Dental Manufacturing Co. of Pennsylvania, in the year 1918, as that was the exact amount of the parent corporation's investment in The S. S. White Dental Manufacturing Co., M. b. h., of Berlin, Germany, as shown by the books of the said The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918."

(Record, p. 51.)

And it also found that:

“From the beginning all transactions between the German company and the parent corporation were in dollars. All prices were quoted in dollars and all financial reports from the German company to the parent corporation were made in dollars, and the statements of values, earnings, and losses are all stated in dollars in the claim presented by the company.”

(Record, p. 62.)

The petitioner contends that:

“It is clear that the German Government had a right, if it chose to exercise it, to seize, and even to confiscate, the private property of alien enemies found within its borders on the outbreak of war.”

(Brief, p. 16.)

From the aforesaid, it follows that the petitioner concedes that the German Government had the right to sequester respondent's property on March 19, 1918, which it did as shown by the record (Record, pp. 50, 51).

It may here be stated that Webster's New International Dictionary, 1923 edition, at page 1924, defines “sequester” under international law “to confiscate or seize and appropriate under the right of pre-emption.”

It will thus be seen that to “sequester” property in international law is to confiscate it, and this is also stated by the Standard Dictionary, 1923 edition, page 2231.

In addition to the above, Webster's New International Dictionary, 1923 edition, page 470, also defines "confiscate":

"Seized and appropriated by the government to public use; forfeited."

* * * * *

"To seize as forfeited to the public treasury; to appropriate to the public use."

The petitioner says:

"The Dental Supply Company, on sequestration, was left with a claim against the German Government which it had every reason to believe would be recognized at the end of the war if Germany was defeated."

(Brief, pp. 16, 17.)

From this language used by the petitioner it is quite clear that the fact that respondent had a loss in 1918 under the taxing statute is recognized by the petitioner, and it is difficult to see why a loss thus recognized should not have been deducted by the respondent in its 1918 income and profits tax return, as the Court of Claims has found that respondent was entitled to do.

According to the petitioner:

"The prospects of complete recovery were not so bright if Germany won the war. The real question in this case, therefore, is whether a sequestration under these conditions, with

a definite expectation and prospect under accepted international practice of having the property or its value returned after the close of hostilities, produced a loss sustained by a completed and closed transaction at the time of the sequestration.” (Brief, p. 17.)

The Court of Claims answered the above contention in a complete manner as follows:

“Losses, which are deductible, it is said, ‘must be evidenced by closed and completed transactions.’ Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms.” (Record, p. 68.)

Continuing, the petitioner states:

“When the property was sequestered in 1918, assuming that the title was divested, the respondent held and owned in place of the property itself a valuable claim against the German Government for the recovery of the property or its value.” (Brief, p. 17.)

The Board of Tax Appeals in Appeal of Remington Typewriter Company, Docket No. 2788, decided September 22, 1926, 4 B. T. A. 880, answers completely the above contention of petitioner for it held:

“Because the petitioner now has a claim which may or may not be paid, does not alter the fact that it suffered a loss in the year 1918. Petitioner should not be indefinitely held to account upon the idea that something may happen in the future, which will change the existing conditions.”

And it also held:

“The loss sustained by the petitioner was a deductible loss during the year 1918, within the meaning of the statute and comes within the rule laid down by the court in *White Dental Mfg. Co. v. United States*, Ct. Cl. —, decided November 9, 1925.”

See also *Emil Stern and Jules Stern*, 5 B. T. A. 89.

The petitioner makes the following assumption:

“Certainly, since November 11, 1918, there has been no reasonable doubt that this claim would be recognized under the rules of international law, and it has been in fact recognized. That the award of the Mixed Claims Commission was only \$70,000 indicates that the Commission was of the opinion that a substantial part of the shrinkage in value of the German assets occurred long before the act of sequestration in March, 1918. The respondent itself thought so, as the record shows it charged off \$20,000 in 1916.” (Brief, p. 17.)

No such assumption can be shown in the record of this case, but on the other hand the petitioner conceded in a stipulation of facts as found by the Court of

Claims that the exact amount of respondent's investment was \$130,764.34. (Record, p. 51.)

Petitioner says:

"The position of the United States is that the sequestration did not leave the respondent with nothing. The prospect of return or payment was definite and substantial, and the loss, if any, to result from the sequestration could not be ascertained until the outcome of the claim for return or payment. Certainly if the German corporation was by the act of sequestration completely divested of title and ownership of the property sequestered there was substituted a claim or demand of substantial value. *Although the prospect of realizing on that claim may have been dubious in March, 1918, by the end of the tax year December 31, 1918, it was evident that if Germany was financially able to, she would pay. If the value of that claim could have been definitely known in 1918, the loss, if any, might have been then definitely ascertained, but until the amount to be realized from the claim was settled the loss was not ascertained.*"

(Brief, p. 18.) (Italics ours.)

In the above mere assumption is resorted to as to what the actual facts were in 1918 as disclosed by the record. The respondent had a definite and positive loss in 1918 of \$130,764.34 (Record, p. 51) and it sustained said loss in the year 1918.

We submit that the petitioner concedes that respondent had a loss in 1918 in the concluding paragraph of the brief filed on behalf of the petitioner as follows:

“While there is something to be said in favor of the proposition that the mere act of sequestration gave the American company the right to charge off and treat as a completed, realized loss the then entire value of the German property, without regard to the fact that it had a substantial expectation and claim of recovery.”

(Brief, pp. 18, 19.)

The test of the right to treat a given transaction as a loss, and the test of what is a loss, must be made upon the state of facts existing when the loss occurs. If *at that time* there is nothing which could be done to save the property, or the right from loss, or to recoup for the loss, then loss occurs.

It cannot be said, it is submitted, that because subsequently the loss is made good under conditions or out of circumstances which could not have been reasonably anticipated no loss occurred when the claim for it was made.

There is substantially no denial, nor could there be, of the fact that owing to the sequestration by the German Government of the respondent's property that it lost that property, and no one could, in March, 1918, have anticipated that it would ever be possible to obtain any recovery in whole or in part of the loss. Such hope would have been based in the first instance upon the expectation of the United States and the Allies winning the war, which hope, in March, 1918, seemed almost beyond possibility.

The plan of reparations under which the claim was made for the loss was not set up until some time after

the conclusion of the war. The presentation of the claim by the respondent is only a step in the collection of the amount of its loss, the payment of the award to it being dependent upon appropriations for that purpose, which have not been made. The loss which the respondent suffered in 1918 is today as much a loss as it was then. If in the course of time the claim allowed by the Mixed Claims Commission should be paid, it will, under the provisions of the Revenue Act, become income taxable to the respondent in the year in which the payment was made, but until that happens the loss continues.

Conclusion.

Respondent respectfully submits that no error of law was made by the court below. It is respectfully requested that on the findings and opinion of the court below, and the reasons set forth in this brief, the judgment of the Court of Claims be affirmed.

Very respectfully,

JOHN HAMPTON BARNES,
JOHN F. McCARRON,
Attorneys for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 291.—OCTOBER TERM, 1926.

United States, Petitioner,	}	On Writ of Certiorari to the Court of Claims.
<i>vs.</i>		
S. S. White Dental Manufacturing Co. of Pennsylvania.		

[May 16, 1927.]

Mr. Justice STONE delivered the opinion of the Court.

This case comes here on writ of certiorari to the Court of Claims, § 240, § 3 (b) Jud. Code, as amended, to review a judgment of that court allowing recovery by respondent of income taxes paid for the year 1918. The sole question presented is the right of the respondent, upheld below, to deduct from its gross income for 1918, the amount of its investment in a subsidiary German corporation whose entire property was seized in that year by the German government as enemy property.

Respondent is a Pennsylvania corporation, engaged in the manufacture and sale of dental supplies. Before 1918 it had organized and controlled, by ownership of all the capital stock, the S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, a German corporation. Its investment in the German corporation in 1918, as carried on its books, aggregated more than \$130,000.

The agreed statement of facts adopted as findings by the court below are so vague as to leave it uncertain whether this investment was represented on the books of respondent by the capital stock alone, or in part by the capital stock and in part by an open account between it and the German corporation. The case was argued on the assumption, which we make, that the investment was represented by both the capital stock and an open account, due to respondent from the German company. The total is conceded to be no more than the fair value of the net assets of the German corporation.

In March, 1918, the sequestrator appointed by the German government took over the property of the German corporation and the

management of its business. It is inferable from the findings, as the government concedes, that the sequestration was similar in purpose and legal effect to that authorized under the Trading with the Enemy Act of the United States, Oct. 6, 1917, c. 106, 40 Stat. 411; March 28, 1918, c. 28, 40 Stat. 459; July 11, 1918, c. 6, 41 Stat. 35; June 5, 1920, c. 241, 41 Stat. 977; March 4, 1923, c. 295, 42 Stat. 1511; May 7, 1926, c. 252, 44 Stat. 406, and we shall deal with the case on that basis.

In March, 1920, the possession of the seized assets and business was relinquished to the German corporation by the sequesterator. As a result of the mismanagement of its affairs while in his custody, and investments of its funds by him in German war bonds, the value of its assets was seriously impaired. In 1922 its tangible assets and its lease were sold for \$6,000. This sum was included in respondent's income tax return for that year. Later respondent filed a claim with the Mixed Claims Commission which was allowed in 1924 to the extent of \$70,000. What if anything may ultimately be realized from this award remains uncertain.

In 1918 the respondent charged off as a loss the entire amount of its investment in the German corporation as shown by its books, and in July of that year passed a resolution authorizing the establishment of a reserve against this loss at the rate of \$15,000 quarterly, beginning March, 1918. In making its income tax return for 1918 respondent deducted from gross income the amount of its investment in the German corporation. The deduction was disallowed by the Commissioner of Internal Revenue, on the sole ground that the loss was not evidenced by a closed and completed transaction in the year for which it was deducted. The tax so assessed was paid under protest and this suit followed.

Section 234 of the Revenue Act of 1918, c. 18, 40 Stat. 9857, 9857, 1078, authorizes the deduction in the computation of income taxes of "Losses sustained during the taxable year not compensated for by insurance or otherwise." In explaining this section, Article 141 of Treasury Regulations, 45, provides that losses incurred in the taxpayer's trade or business or in any transaction entered into for profit may be deducted but such losses "must usually be evidenced by closed and completed transactions." Article 153 provides in part: "Where all the surrounding and attendant circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not

result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction." And Art. 133 reads in part:—"If stock of a corporation becomes worthless, its cost or its fair market value as of March 1, 1913, if acquired prior thereto, may be deducted by the owner in the taxable year in which the stock became worthless, provided a satisfactory showing of its worthlessness be made as in the case of bad debts." See Art. 133, making these provisions applicable to corporations.

The case turns upon the question whether the loss, concededly sustained by the respondent through the seizure of the assets of the German company in 1918, was so evidenced by a closed transaction within the meaning of the quoted statute and necessary consequences as to authorize its deduction from gross income of that year. The statute obviously does not contemplate and the regulations (Art. 133) forbid the deduction of losses resulting from the mere fluctuation in value of property owned by the taxpayer. See *New York Ins. Co. v. Edwards*, 251 U. S. 309, 316; cf. *Wells v. Life Deposit Co.*, 259 U. S. 265. But with equal certainty they do contemplate the deduction from gross income of losses, which are had by identifiable events, such as the sale of property (Art. 133, 144), or caused by its destruction or physical injury (Art. 133, 142, 143) or, in the case of debts, by the occurrence of such events as prevent their collection (Art. 133).

The transaction evidencing the loss here was the seizure of the property of the German company. The loss resulted to the respondent because it was a creditor and stockholder of that company which, as a result of the requisition, was left without property or assets of any kind. The requisition of enemy property was within the rights of the German government as a belligerent power and when effected left the corporation without right to demand its release or compensation for its seizure, at least until the declaration of peace. See *Hillman & Co. v. United States*, 259 U. S. 251; *White v. Deutsche Sculpture Co.*, 260 U. S. 283, 300, 303; *Swiss Insurance Co. v. Wells*, 267 U. S. 42; *Stahle v. Walling*, 255 U. S. 239, 242-244; *Central Trust Co. v. Brown*, 254 U. S. 354; *Brown v. United States & French*, 330, 332. What would ultimately come back to it, as the court proved, might be viewed not as a matter of right, but as a matter either of grace or the completed or execution by the victor. In any case the amount

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realized would be dependent upon the hazards of the war then in progress.

That legal action by respondent upon its open accounts against a corporation thus despoiled would have been fruitless within the meaning of Art. 151 seems not open to question. No distinction is urged by the government between respondent's investment in the stock of the German company and in its open accounts. It is equally apparent that the stock after the seizure was as worthless as the obligations of the German company and was deductible under Art. 144 on the same basis as bad debts.

If the seized assets are viewed as the property of respondent, ignoring the entity of the German company, the result is the same. The quoted regulations, consistently with the statute, contemplate that a loss may become complete enough for deduction without the taxpayer's establishing that there is no possibility of an eventual recoupment. It would require a high degree of optimism to discern in the seizure of enemy property by the German government in 1918 more than a remote hope of ultimate salvage from the wreck of the war. The Taxing Act does not require the taxpayer to be an incorrigible optimist.

We need not attempt to say what constitutes a closed transaction evidencing loss in other situations. It is enough to justify the deduction here that the transaction causing the loss was completed when the seizure was made. It was none the less a deductible loss then, although later the German government bound itself to repay and an award was made by the Mixed Claims Commission which may result in a recovery.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

OPINION

SUPREME COURT OF THE UNITED STATES.

No. 291.—OCTOBER TERM, 1926.

United States, Petitioner,	{	On Writ of Certiorari to the Court of Claims.
vs.		
S. S. White Dental Manufacturing Co. of Pennsylvania.		

[May 16, 1927.]

Mr. Justice STONE delivered the opinion of the Court.

This case comes here on writ of certiorari to the Court of Claims, § 240, § 3 (b) Jud. Code, as amended, to review a judgment of that court allowing recovery by respondent of income taxes paid for the year 1918. The sole question presented is the right of the respondent, upheld below, to deduct from its gross income for 1918, the amount of its investment in a subsidiary German corporation whose entire property was seized in that year by the German government as enemy property.

Respondent is a Pennsylvania corporation, engaged in the manufacture and sale of dental supplies. Before 1918 it had organized and controlled, by ownership of all the capital stock, the S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, a German corporation. Its investment in the German corporation in 1918, as carried on its books, aggregated more than \$130,000.

The agreed statement of facts adopted as findings by the court below are so vague as to leave it uncertain whether this investment was represented on the books of respondent by the capital stock alone, or in part by the capital stock and in part by an open account between it and the German corporation. The case was argued on the assumption, which we make, that the investment was represented by both the capital stock and an open account, due to respondent from the German company. The total is conceded to be no more than the fair value of the net assets of the German corporation.

In March, 1918, the sequestrator appointed by the German government took over the property of the German corporation and the

management of its business. It is inferable from the findings, as the government concedes, that the sequestration was similar in purpose and legal effect to that authorized under the Trading with the Enemy Act of the United States, Oct. 6, 1917, c. 106, 40 Stat. 411; March 28, 1918, c. 28, 40 Stat. 459; July 11, 1919, c. 6, 41 Stat. 35; June 5, 1920, c. 241, 41 Stat. 977; March 4, 1923, c. 285, 42 Stat. 1511; May 7, 1926, c. 252, 44 Stat. 406, and we shall deal with the case on that basis.

In March, 1920, the possession of the seized assets and business was relinquished to the German corporation by the sequestrator. As a result of the mismanagement of its affairs while in his custody, and investments of its funds by him in German war loans, the value of its assets was seriously impaired. In 1922 its tangible assets and its lease were sold for \$6,000. This sum was included in respondent's income tax return for that year. Later respondent filed a claim with the Mixed Claims Commission which was allowed in 1924 to the extent of \$70,000. What if anything may ultimately be realized from this award remains uncertain.

In 1918 the respondent charged off as a loss the entire amount of its investment in the German corporation as shown by its books, and in July of that year passed a resolution authorizing the establishment of a reserve against this loss at the rate of \$15,000 quarterly, beginning March, 1918. In making its income tax return for 1918 respondent deducted from gross income the amount of its investment in the German corporation. The deduction was disallowed by the Commissioner of Internal Revenue, on the sole ground that the loss was not evidenced by a closed and completed transaction in the year for which it was deducted. The tax so assessed was paid under protest and this suit followed.

Section 234 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1077, 1078, authorizes the deduction in the computation of income taxes of "Losses sustained during the taxable year not compensated for by insurance or otherwise;". In explaining this section, Article 141 of Treasury Regulations, 45, provides that losses incurred in the taxpayer's trade or business or in any transaction entered into for profit may be deducted but such losses "must usually be evidenced by closed and completed transactions." Article 151 provides in part: "Where all the surrounding and attendant circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not

result in the satisfaction of execution on a judgment, a showing of these facts will be sufficient evidence of the worthlessness of the debt for the purpose of deduction." And Art. 144 reads in part: "if stock of a corporation becomes worthless, its cost or its fair market value as of March 1, 1913, if acquired prior thereto, may be deducted by the owner in the taxable year in which the stock became worthless, provided a satisfactory showing of its worthlessness be made as in the case of bad debts." See Art. 561, making these provisions applicable to corporations.

The case turns upon the question whether the loss, concededly sustained by the respondent through the seizure of the assets of the German company in 1918, was so evidenced by a closed transaction within the meaning of the quoted statute and treasury regulations as to authorize its deduction from gross income of that year. The statute obviously does not contemplate and the regulations (Art. 144) forbid the deduction of losses resulting from the mere fluctuation in value of property owned by the taxpayer. *New York Ins. Co. v. Edwards*, 271 U. S. 109, 116; cf. *Miles v. Safe Deposit Co.*, 259 U. S. 247. But with equal certainty they do contemplate the deduction from gross income of losses, which are fixed by identifiable events, such as the sale of property (Art. 141, 144), or caused by its destruction or physical injury (Art. 141, 142, 143) or, in the case of debts, by the occurrence of such events as prevent their collection (Art. 151).

The transaction evidencing the loss here was the seizure of the property of the German company. The loss resulted to the respondent because it was a creditor and stockholder of that company which, as a result of the sequestration, was left without property or assets of any kind. The sequestration of enemy property was within the rights of the German government as a belligerent power and when effected left the corporation without right to demand its release or compensation for its seizure, at least until the declaration of peace. See *Littlejohn & Co. v. United States*, 270 U. S. 215; *White v. Mechanics Securities Corp.*, 269 U. S. 283, 300, 301; *Swiss Insurance Co. v. Miller*, 267 U. S. 42; *Stoehr v. Wallace*, 255 U. S. 239, 242-244; *Central Trust Co. v. Garvan*, 254 U. S. 554; *Brown v. United States*, 8 Cranch. 110, 122. What would ultimately come back to it, as the event proved, might be secured not as a matter of right, but as a matter either of grace to the vanquished or exaction by the victor. In any case the amount

4 *United States v. S. S. White Dental Manufacturing Co.*

realized would be dependent upon the hazards of the war then in progress.

That legal action by respondent upon its open accounts against a corporation thus despoiled would have been fruitless within the meaning of Art. 151 seems not open to question. No distinction is urged by the government between respondent's investment in the stock of the German company and in its open accounts. It is equally apparent that the stock after the seizure was as worthless as the obligations of the German company and was deductible under Art. 144 on the same basis as bad debts.

If the seized assets are viewed as the property of respondent, ignoring the entity of the German company, the result is the same. The quoted regulations, consistently with the statute, contemplate that a loss may become complete enough for deduction without the taxpayer's establishing that there is no possibility of an eventual recoupment. It would require a high degree of optimism to discern in the seizure of enemy property by the German government in 1918 more than a remote hope of ultimate salvage from the wreck of the war. The Taxing Act does not require the taxpayer to be an incorrigible optimist.

We need not attempt to say what constitutes a closed transaction evidencing loss in other situations. It is enough to justify the deduction here that the transaction causing the loss was completed when the seizure was made. It was none the less a deductible loss then, although later the German government bound itself to repay and an award was made by the Mixed Claims Commission which may result in a recovery.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.